

# भारत का राजपत्र The Gazette of India

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सं. 35] नई दिल्ली, अगस्त 26—सितम्बर 1, 2007, शनिवार/भाद्र 4—भाद्र 10, 1929  
No. 35] NEW DELHI, AUGUST 26—SEPTEMBER 1, 2007, SATURDAY/BHADRA 4—BHADRA 10, 1929

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 20 अगस्त, 2007

का.आ. 2420.—केंद्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए पश्चिम बंगाल राज्य सरकार, गृह पुलिस विभाग की अधिसूचना सं. 44-पी.एस. दिनांक 18-01-2007 द्वारा प्राप्त सहमति से सेंट्रल कोलकाता लॉर्ड जीसस मेडिकल एंड वेल्फेयर सोसायटी, 2, वल्लीवल्लीह लेन, कोलकाता-16 के विरुद्ध 2000-2001 से विपुल विदेशी अभिदाय राशि प्राप्त करने के लिए विदेशी अभिदाय (विनियमन) अधिनियम, 1976 की धारा 23(i) के अधीन मामले और उक्त मामले से संबंधित अथवा संसक्त प्रयत्न (नों), दुष्प्रेरण और षडयंत्र तथा उसी संव्यवहार के अनुक्रम में किए गए अथवा उन्हीं तथ्यों से उद्भूत किसी अन्य अपराध(धों) का अन्वेषण करने के लिए दिल्ली

3549 GI/2007

विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण पश्चिम बंगाल राज्य पर निर्भर करती है।

[सं. 228/8/2006-ए.वी.डी-II]

चंद्र प्रकाश, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC  
GRIEVANCES AND PENSIONS  
(Department of Personnel and Training)

New Delhi, the 20th August, 2007

S.O. 2420.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of West Bengal, Home (Political) Department, Secret Section vide Notification No. 44 -P.S. dated 18th January, 2007, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment

(6183)

to the whole of the State of West Bengal for investigation of the case against the Central Kolkata Lord Jesus Medical and Welfare Society, 2, Waliwallah Lane, Kolkata-16 for receiving huge amount of foreign contribution since 2000-2001 under section 23(i) of the Foreign Contribution (Regulation) Act, 1976 (Act No. 49 of 1976) and attempts, abetments and conspiracies in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in the course of the same transaction or arising out of the same facts.

[No. 228/8/2006-AVD-II]

CHANDRA PRAKASH, Under Secy.

कार्यालय आयुक्त, केन्द्रीय उत्पाद एवं सीमा शुल्क

भोपाल, 10 अगस्त, 2007

का.आ. 2421.—आयुक्त कार्यालय, केन्द्रीय उत्पाद एवं सीमा शुल्क, भोपाल के निम्नलिखित समूह 'क' अधिकारी निवर्तन आयु प्राप्त करने पर उनके नाम के आगे दर्शाए गए दिनांक से शासकीय सेवा से निवृत्त हुए :-

क्र.सं	अधिकारी का नाम सर्वश्री	पदनाम	निवर्तन आयु प्राप्त करने पर सेवानिवृत्त की दिनांक
1.	पी.एल. पाठक	सहायक आयुक्त	31-07-2007 अपराह्न

[फा.सं.-II (3)4-गोप./2007]

रेनुका मान, आयुक्त

OFFICE OF THE COMMISSIONER OF CUSTOMS  
AND CENTRAL EXCISE

Bhopal, the 10th August, 2007

S.O. 2421.—The following Group 'A' officer of Office of the Commissioner of Central Excise & Customs, Bhopal, has retired from Govt. service from the date as shown against his name on having attained the age of superannuation retired :—

Sl. No.	Name of the Officer S/Shri	Designation	Date of retirement on Superannuation
1.	P.L. Pathak	Assistant Commissioner	31-07-2007 (A.N.)

[F.No. II(3)4-Con./2007]

RENUKA MANN, Commissioner

वित्त मंत्रालय

( राजस्व विभाग )

केन्द्रीय प्रत्यक्ष कर बोर्ड

नई दिल्ली, 19 जून, 2007

( आयकर )

का.आ. 2422.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खंड (23) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा "दि कर्नाटक स्टेट ब्रिज एसोसिएशन, बंगलौर" को कर निर्धारण वर्ष 1997-98 से 1999-2000 तक के लिए और

निम्नलिखित शर्तों के अधीन उक्त उपखंड के प्रयोजनार्थ अधिसूचित करती है, अर्थात् :-

- कर निर्धारिती अपनी आय का इस्तेमाल अथवा अपनी आय का इस्तेमाल करने के लिए उसका संचयन पूर्णतया तथा अनन्यतया उन उद्देश्यों के लिए करेगा जिनके लिए इसकी स्थापना की गई है;
- कर निर्धारिती उपर्युक्त कर निर्धारण वर्षों से संगत पूर्ववर्ती वर्षों की किसी भी अवधि के दौरान धारा 11 की उप-धारा (5) में विनिर्दिष्ट किसी एक अथवा एक से अधिक ढंग अथवा तरीकों से भिन्न तरीकों से उसकी निधि (जेवर-जवाहिरात, फर्नीचर आदि के रूप में प्राप्त तथा अनुरक्षित स्वैच्छिक अंशदान से भिन्न) का निवेश नहीं करेगा अथवा उसे जमा नहीं करेगा;
- यह अधिसूचना किसी ऐसी आय के संबंध में लागू नहीं होगी, जो कि कारोबार से प्राप्त लाभ तथा अभिलाभ हो जब तक कि ऐसा कारोबार संस्था के उद्देश्यों की प्राप्ति के लिए प्रासंगिक नहीं हो तथा ऐसे कारोबार के संबंध में अलग से लेखा-पुस्तिकाएं नहीं रखी जाती हों ;
- कर निर्धारिती आयकर अधिनियम, 1961 के उपबंधों के अनुसार अपनी आय की विवरणी नियमित रूप से आयकर प्राधिकारी के समक्ष दाखिल करेगा;
- विघटन की स्थिति में अतिरिक्त राशियाँ और परिसंपत्तियाँ समान उद्देश्यों वाले धर्मार्थ संगठन को दे दी जाएंगी ।

[अधिसूचना सं. 205/2007/फा. सं. 196/12/2004-आयकर नि.]

दीपक गर्ग, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 19th June, 2007

CENTRAL BOARD OF DIRECT TAXES

(Income Tax)

S.O. 2422.—In exercise of the powers conferred by the clause (23) of Section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the "The Karnataka State Bridge Association, Bangalore" for the purpose of the said clause for the assessment years 1997-1998 to 1999-2000 subject to the following conditions, namely :—

- the assessee will apply its income, or accumulate for application, wholly and exclusively to the objects for which it is established ;
- the assessee will not invest or deposit its fund (other than voluntary contributions received and maintained in the form of jewellery, furniture etc.) for any period during the previous years relevant to the assessment years mentioned above

otherwise than in any one or more of the forms or modes specified in sub-section (5) of Section 11;

- (iii) this notification will not apply in relation to any income being profits and gains of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business;
- (iv) the assessee will regularly file its return of income before the income-tax authority in accordance with the provisions of the Income-tax Act, 1961;
- (v) that in the event of dissolution, its surplus and the assets will be given to a charitable organisation with similar objectives.

[Notification No. 205/2007/F. No. 196/12/2004-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 21 जून, 2007

(आयकर)

का.आ. 2423.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खंड (23) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा “मेसर्स स्पोर्ट्स बेनीफिट फंड, कोलकाता” को कर निर्धारण वर्ष 1997-98 से 1999-2000 तक के लिए और निम्नलिखित शर्तों के अधीन उक्त उपखंड के प्रयोजनार्थ अधिसूचित करती है, अर्थात् :-

- (i) कर निर्धारिती अपनी आय का इस्तेमाल अथवा अपनी आय का इस्तेमाल करने के लिए उसका संचयन पूर्णतया तथा अनन्यतया उन उद्देश्यों के लिए करेगा जिनके लिए इसकी स्थापना की गई है;
- (ii) कर निर्धारिती उपर्युक्त कर निर्धारण वर्षों से संगत पूर्ववर्ती वर्षों की किसी भी अवधि के दौरान धारा 11 की उप-धारा (5) में विनिर्दिष्ट किसी एक अथवा एक से अधिक ढंग अथवा तरीकों से भिन्न तरीकों से उसकी निधि (जेवर-जवाहिरात, फर्नीचर आदि के रूप में प्राप्त तथा अनुरक्षित स्वैच्छिक अंशदान से भिन्न) का निवेश नहीं करेगा अथवा उसे जमा नहीं करेगा ;
- (iii) यह अधिसूचना किसी ऐसी आय के संबंध में लागू नहीं होगी, जो कि कारोबार से प्राप्त लाभ तथा अभिलाभ हो जब तक कि ऐसा कारोबार संस्था के उद्देश्यों की प्राप्ति के लिए प्रासंगिक नहीं हो तथा ऐसे कारोबार के संबंध में अलग से लेखा-पुस्तिकाएं नहीं रखी जाती हों ;
- (iv) कर निर्धारिती आयकर अधिनियम, 1961 के उपबंधों के अनुसार अपनी आय की विवरणी नियमित रूप से आयकर प्राधिकारी के समक्ष दाखिल करेगा ;
- (v) विघटन की स्थिति में अतिरिक्त राशियाँ और परिसंपत्तियाँ समान उद्देश्यों वाले धर्मार्थ संगठन को दे दी जाएंगी ।

[अधिसूचना सं. 206/2007/फा. सं. 196/3/1999-आयकर नि-1]

दीपक गर्ग, अवर सचिव

New Delhi, the 21st June, 2007

(INCOME TAX)

S.O. 2423.—In exercise of the powers conferred by the clause (23) of Section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the “Mayor’s Sports Benefit Fund, Kolkata” for the purpose of the said clause for the assessment years 1997-1998 to 1999-2000 subject to the following conditions, namely :—

- (i) the assessee will apply its income, or accumulate for application, wholly and exclusively to the objects for which it is established ;
- (ii) the assessee will not invest or deposit its fund (other than voluntary contributions received and maintained in the form of jewellery, furniture etc.) for any period during the previous years relevant to the assessment years mentioned above otherwise than in any one or more of the forms or modes specified in sub-section (5) of Section 11;
- (iii) this notification will not apply in relation to any income being profits and gains of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business ;
- (iv) the assessee will regularly file its return of income before the income-tax authority in accordance with the provisions of the Income-tax Act, 1961;
- (v) that in the event of dissolution, its surplus and the assets will be given to a charitable organisation with similar objectives.

[Notification No. 206/2007/F. No. 196/3/1999-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 10 अगस्त, 2007

(आयकर)

का.आ. 2424.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खंड (23) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा “ऑल इण्डिया फुटबॉल फेडरेशन, कन्नानोर, कोचि” को कर निर्धारण वर्ष 1995-96 से 1997-98 तक के लिए और निम्नलिखित शर्तों के अधीन उक्त उपखंड के प्रयोजनार्थ अधिसूचित करती है, अर्थात् :-

- (i) कर निर्धारिती अपनी आय का इस्तेमाल अथवा अपनी आय का इस्तेमाल करने के लिए उसका संचयन पूर्णतया तथा अनन्यतया उन उद्देश्यों के लिए करेगा जिनके लिए इसकी स्थापना की गई है;
- (ii) कर निर्धारिती उपर्युक्त कर निर्धारण वर्षों से संगत पूर्ववर्ती वर्षों की किसी भी अवधि के दौरान धारा 11 की उप-धारा (5) में विनिर्दिष्ट किसी एक अथवा एक से अधिक ढंग अथवा तरीकों से भिन्न तरीकों से उसकी निधि

(जेवर-जवाहिरात, फर्नीचर आदि के रूप में प्राप्त तथा अनुरक्षित स्वैच्छिक अंशदान से भिन्न) का निवेश नहीं करेगा अथवा उसे जमा नहीं करेगा;

- (iii) यह अधिसूचना किसी ऐसी आय के संबंध में लागू नहीं होगी, जो कि कारोबार से प्राप्त लाभ तथा अभिलाभ हो जब तक कि ऐसा कारोबार संस्था के उद्देश्यों की प्राप्ति के लिए प्रासंगिक नहीं हो तथा ऐसे कारोबार के संबंध में अलग से लेखा-पुस्तिकाएँ नहीं रखी जाती हों;
- (iv) कर निर्धारित आयकर अधिनियम, 1961 के उपबंधों के अनुसार अपनी आय की विवरणी नियमित रूप से आयकर प्राधिकारी के समक्ष दाखिल करेगा;
- (v) विघटन की स्थिति में अतिरिक्त राशियाँ और परिसंपत्तियाँ समान उद्देश्यों वाले धर्मार्थ संगठन को दे दी जाएंगी।

[अधिसूचना सं. 225/2007/फा.सं.196/3/2005-आयकर नि-1]

दीपक गर्ग, अवर सचिव

New Delhi, the 10th August, 2007

(Income Tax)

**S.O. 2424.**—In exercise of the powers conferred by the clause (23) of Section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the “All India Football Federation, Cannanore, Kochi” for the purpose of the said clause for the assessment years 1995-96 to 1997-98 subject to the following conditions, namely :—

- (i) the assessee will apply its income, or accumulate for application, wholly and exclusively to the objects for which it is established ;
- (ii) the assessee will not invest or deposit its fund (other than voluntary contributions received and maintained in the form of jewellery, furniture etc.) for any period during the previous years relevant to the assessment years mentioned above other wise than in any one or more of the forms or modes specified in sub-section (5) of Section 11;
- (iii) this notification will not apply in relation to any income being profits and gains of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business ;
- (iv) the assessee will regularly file its return of income before the income-tax authority in accordance with the provisions of the Income-tax Act, 1961;
- (v) that in the event of dissolution, its surplus and the assets will be given to a charitable organisation with similar objectives.

[Notification No. 225/2007/F. No. 196/3/2005-ITA-I]

DEEPAK GARG, Under Secy.

नई दिल्ली, 16 अगस्त, 2007

**का.आ. 2425.**—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में राजस्व विभाग के अधीन केन्द्रीय उत्पाद एवं सीमा शुल्क बोर्ड के निम्नलिखित क्षेत्रीय कार्यालय को, जिनके 80 प्रतिशत कर्मचारीवृंद ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

संगठन एवं कार्मिक प्रबंध निदेशालय,  
सीमा एवं केन्द्रीय उत्पाद शुल्क,  
412-ए, दीपशिखा बिल्डिंग,  
राजेन्द्र प्लेस,  
नई दिल्ली-110008

[फा. सं.-11013 (01) 2007-हिन्दी-2]

मधु शर्मा, निदेशक (राजभाषा)

New Delhi, the 16th August, 2007

**S.O. 2425.**—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for Official purposes of the Union) Rules, 1976 the Central Government hereby notifies the following office under the Board of Central Excise & Customs, Department of Revenue, the 80% staff whereof has acquired the working knowledge of Hindi :

Directorate of Organisation & Personnel  
Management,  
Customs & Central Excise,  
412-A, Deep Shikha Building,  
Rajendra Place,  
New Delhi-110008

[F.No. 11013(01)2007-Hindi-2]

MADHU SHARMA, Director (OL)

नई दिल्ली, 21 अगस्त, 2007

**का.आ. 2426.**—सर्वसाधारण की जानकारी के लिए एतद्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5ग और 5इ के साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उपधारा (1) के खंड (iii) के प्रयोजनार्थ 1-4-2004 से संगठन मुद्रा फाउंडेशन फॉर कम्युनिकेशन, रिसर्च एंड एजुकेशन, अहमदाबाद को निम्नलिखित शर्तों के अधीन आंशिक रूप से अनुसंधान कार्यकलापों में लगी ‘अन्य संस्था’ की श्रेणी में अनुमोदित किया गया है, अर्थात् :—

- (i) अनुमोदित संगठन को प्रदत्त राशि का उपयोग सामाजिक विज्ञान अनुसंधान के लिए किया जाएगा ;
- (ii) अनुमोदित संगठन अपने संकाय सदस्यों अथवा अपने नामांकित छात्रों के माध्यम से सामाजिक विज्ञान अनुसंधान अथवा सांख्यिकी अनुसंधान करेगा ;

- (iii) अनुमोदित संगठन बही-खाता रखेगा तथा उक्त अधिनियम की धारा 288 की उप धारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से अपनी खाता-बही की लेखा परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप धारा (1) के अंतर्गत आय विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा।
- (iv) अनुमोदित संगठन प्राप्त दान तथा सामाजिक विज्ञान अनुसंधान के लिए प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा परीक्षा रिपोर्ट के साथ लेखा परीक्षक द्वारा विधिवत सत्यापित विवरण की प्रति प्रस्तुत करेगा।

2. केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि अनुमोदित संगठन :-

- (क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित लेखा-बही नहीं रखेगा ; अथवा
- (ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अपनी लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करेगा ; अथवा
- (ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में उल्लिखित सामाजिक विज्ञान अनुसंधान अथवा सांख्यिकी अनुसंधान के लिए प्राप्त एवं प्रयुक्त दान का अपना विवरण प्रस्तुत नहीं करेगा ; अथवा
- (घ) अपना अनुसंधान कार्य करना बंद कर देगा अथवा इसके अनुसंधान कार्य को जायज नहीं पाया जाएगा ; अथवा
- (ङ) उक्त नियमावली के नियम 5 ग और 5 ड के साथ पठित उक्त अधिनियम की धारा 35 की उपधारा (1) के खंड (ii) के प्रावधानों के अनुरूप नहीं होगा तथा उनका पालन नहीं करेगा।

[अधिसूचना सं. 228/2007/फा.सं.203/17/2005-आ.क. नि.-II]

दीपक गर्ग, अवर सचिव

New Delhi, the 21st August, 2007

**S.O. 2426.**—It is hereby notified for general information that the organization **Mudra Foundation for Communication, Research & Education, Ahmedabad** has been approved by the Central Government for the purpose of clause (iii) of sub-section (1) of Section 35 of the Income-tax Act, (said Act), read with rules 5C and 5E of the Income-tax Rules, 1962 (said Rules) with effect from **1-4-2004** in the category of 'other institution' partly engaged in research activities subject to the following conditions, namely :—

- (i) The sums paid to the approved organization shall be utilized for research in social sciences ;
- (ii) The approved organization shall carry out research in social science or statistical research

through its faculty members or its enrolled students ;

- (iii) The approved organization shall maintain books of accounts and get such books audited by an accountant as defined in the explanation to sub-section (2) of section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of section 139 of the said Act ;
- (iv) The approved organization shall maintain a separate statement of donations received and amounts applied for research in social sciences and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization :—

- (a) fails to maintain books of accounts referred to in sub-paragraph (iii) of paragraph 1 ; or
- (b) fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1 ; or
- (c) fails to furnish its statement of the donations received and sums applied for research in social sciences or statistical research referred to in sub-paragraph (iv) of paragraph 1 ; or
- (d) ceases to carry on its research activities or its research activities are not found to be genuine ; or
- (e) ceases to conform to and comply with the provisions of clause (iii) of sub-section (1) of section 35 of the said Act, read with rules 5C and 5E of the said Rules.

[Notification No. 228/2007/F. No. 203/17/2005-ITA-II]

DEEPAK GARG, Under Secy.

नई दिल्ली, 21 अगस्त, 2007

**का.आ. 2427.**—सर्वसाधारण की जानकारी के लिए एतद्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5ग और 5ड के साथ पठित अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उपधारा (1) के खंड (ii) के प्रयोजनार्थ 1-4-2004 से संगठन नाग्री आई रिसर्च फाउंडेशन, अहमदाबाद को निम्नलिखित शर्तों के अधीन आंशिक रूप से अनुसंधान कार्यकलापों में लगी 'अन्य संस्था' की श्रेणी में अनुमोदित किया गया है, अर्थात् :-

- (i) अनुमोदित संगठन को प्रदत्त राशि का उपयोग वैज्ञानिक अनुसंधान के लिए किया जाएगा;

- (ii) अनुमोदित संगठन अपने संकाय सदस्यों अथवा अपने नामांकित छात्रों के माध्यम से वैज्ञानिक अनुसंधान करेगा;
- (iii) अनुमोदित संगठन बही-खाता रखेगा तथा उक्त अधिनियम की धारा 288 की उप धारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से अपने खाता-बही की लेखा परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप धारा (1) के अंतर्गत आय विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा।
- (iv) अनुमोदित संगठन वैज्ञानिक अनुसंधान के लिए प्राप्त दान तथा प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा परीक्षा रिपोर्ट के साथ लेखा परीक्षक द्वारा विधिवत सत्यापित विवरण की प्रति प्रस्तुत करेगा।

2. केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि अनुमोदित संगठन :-

- (क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित लेखा-बही नहीं रखेगा; अथवा
- (ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अपनी लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करेगा; अथवा
- (ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में उल्लिखित प्राप्त दान तथा वैज्ञानिक अनुसंधान के लिए प्रयुक्त राशि का विवरण प्रस्तुत नहीं करेगा; अथवा
- (घ) अपना अनुसंधान कार्य करना बंद कर देगा अथवा इसके अनुसंधान कार्य को जायज नहीं पाया जाएगा; अथवा
- (ङ) उक्त नियमावली के नियम 5 ग और 5 ड के साथ पठित उक्त अधिनियम की धारा 35 की उपधारा (1) के खंड (ii) के उपबन्धों के अनुरूप नहीं होगा तथा उनका पालन नहीं करेगा।

[अधिसूचना सं. 230/2007/फा. सं.203/37/2006-आ.क.नि-II]

दीपक गर्ग, अवर सचिव

New Delhi, the 21st August, 2007

**S.O. 2427.**—It is hereby notified for general information that the organization **Nagri Eye Research Foundation, Ahmedabad** has been approved by the Central Government for the purpose of clause (ii) of Sub-section (1) of Section 35 of the Income-tax Act, 1961 (said Act), read with rules 5C and 5E of the Income-tax Rules, 1962 (said Rules) with effect from 1-4-2003 in the category of 'other institution' partly engaged in research activities subject to the following conditions, namely :—

- (i) The sums paid to the approved organization shall be utilized for scientific research;

- (ii) The approved organization shall carry out scientific research through its faculty members or its enrolled students ;
- (iii) The approved organization shall maintain books of accounts and get such books audited by an accountant as defined in the explanation to Sub-section (2) of section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of Section 139 of the said Act;
- (iv) The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization :—

- (a) fails to maintain books of accounts referred to in sub-paragraph (iii) of paragraph 1; or
- (b) fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or
- (c) fails to furnish its statement of the donations received and sums applied for scientific research referred to in sub-paragraph (iv) of paragraph 1; or
- (d) ceases to carry on its research activities or its research activities are not found to be genuine; or
- (e) ceases to conform to and comply with the provisions of clause (ii) of sub-section (1) of Section 35 of the said Act, read with rules 5C and 5E of the said Rules.

[Notification No. 230/2007/F. No. 203/37/2006-ITA-II]

DEEPAK GARG, Under Secy.

नई दिल्ली, 21 अगस्त, 2007

**का.आ. 2428.**—सर्वसाधारण की जानकारी के लिए एतद्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5ग और 5ड के साथ पठित अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उपधारा (1) के खंड (ii) के प्रयोजनार्थ 1-4-2004 से संगठन मैत्रीवाणी इंस्टीट्यूट ऑफ एक्सपेरिमेंटल रिसर्च एंड एजुकेशन, कोलकाता को निम्नलिखित शर्तों के अधीन आंशिक रूप से अनुसंधान कार्यकलापों में लगी 'अन्य संस्था' की श्रेणी में अनुमोदित किया गया है, अर्थात् :—

- (i) अनुमोदित संगठन को प्रदत्त राशि का उपयोग वैज्ञानिक अनुसंधान के लिए किया जाएगा;

- (ii) अनुमोदित संगठन अपने संकाय सदस्यों अथवा अपने नामांकित छात्रों के माध्यम से वैज्ञानिक अनुसंधान करेगा;
- (iii) अनुमोदित संगठन बही-खाता रखेगा तथा उक्त अधिनियम की धारा 288 की उप धारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से अपनी खाता-बही की लेखा परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप धारा (1) के अंतर्गत आय विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा।
- (iv) संगठन वैज्ञानिक अनुसंधान के लिए प्राप्त दान तथा प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा परीक्षा रिपोर्ट के साथ लेखा परीक्षक द्वारा विधिवत सत्यापित विवरण की प्रति प्रस्तुत करेगा।

2. केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि अनुमोदित संगठन :-

- (क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित लेखा-बही नहीं रखेगा; अथवा
- (ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अपनी लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करेगा; अथवा
- (ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में उल्लिखित वैज्ञानिक अनुसंधान के लिए प्राप्त एवं प्रयुक्त दान का अपना विवरण प्रस्तुत नहीं करेगा; अथवा
- (घ) अपना अनुसंधान कार्य करना बंद कर देगा अथवा इसके अनुसंधान कार्य को जायज नहीं पाया जाएगा; अथवा
- (ङ) उक्त नियमावली के नियम 5 ग और 5 ड के साथ पठित उक्त अधिनियम की धारा 35 की उपधारा (1) के खंड (ii) के प्रावधानों के अनुरूप नहीं होगा तथा उनका पालन नहीं करेगा।

[अधिसूचना सं. 229/2007/फा. सं. 203/29/2005-आ.क.नि-II]

दीपक गर्ग, अवर सचिव

New Delhi, the 21st August, 2007

**S.O. 2428.**—It is hereby notified for general information that the organization **Matrivani Institute of Experimental Research and Education, Kolkata** has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of Section 35 of the Income-tax Act, 1961 (said Act), read with rules 5C and 5E of the Income-tax Rules, 1962 (said Rules) with effect from 1-4-2004 in the category of 'other institution' partly engaged in research activities subject to the following conditions, namely :—

- (i) The sums paid to the approved organization shall be utilized for scientific research;

(ii) The approved organization shall carry out scientific research through its faculty members or its enrolled students;

(iii) The approved organization shall maintain books of accounts and get such books audited by an accountant as defined in the explanation to sub-section (2) of Section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of Section 139 of the said Act;

(iv) The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization :—

- (a) fails to maintain books of accounts referred to in sub-paragraph (iii) of paragraph 1; or
- (b) fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or
- (c) fails to furnish its statement of the donations received and sums applied for scientific research referred to in sub-paragraph (iv) of paragraph 1; or
- (d) ceases to carry on its research activities or its research activities are not found to be genuine; or
- (e) ceases to conform to and comply with the provisions of clause (ii) of sub-section (1) of Section 35 of the said Act, read with rule 5C and 5E of the said Rules.

[Notification No. 229/2007/F. No. 203/29/2005-ITA-II]

DEEPAK GARG, Under Secy.

नई दिल्ली, 21 अगस्त, 2007

**का.आ. 2429.**—सर्वसाधारण की जानकारी के लिए एतद्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5ग और 5ड के साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उपधारा (1) के खंड (ii) के प्रयोजनार्थ 1-4-2003 से संगठन 'महाराष्ट्र मेडिकल रिसर्च सोसायटी, पुणे', को निम्नलिखित शर्तों के अधीन 'वैज्ञानिक अनुसंधान संघ' की श्रेणी में अनुमोदित किया गया है, अर्थात् :—

- (i) अनुमोदित 'वैज्ञानिक अनुसंधान संघ' का एक मात्र लक्ष्य वैज्ञानिक अनुसंधान को शुरू करना होगा;
- (ii) अनुमोदित संगठन स्वयं वैज्ञानिक अनुसंधान करेगा;

(iii) अनुमोदित संगठन बही-खाता रखेगा तथा उक्त अधिनियम की धारा 288 की उप धारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से अपनी खाता-बही की लेखा परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप धारा (1) के अंतर्गत आय विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा।

(iv) अनुमोदित संगठन वैज्ञानिक अनुसंधान के लिए प्राप्त दान तथा प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा परीक्षा रिपोर्ट के साथ लेखा परीक्षक द्वारा विधिवत सत्यापित विवरण की प्रति प्रस्तुत करेगा।

2. केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि अनुमोदित संगठन :—

- (क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित लेखा-बही नहीं रखेगा; अथवा
- (ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अपनी लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करेगा; अथवा
- (ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में उल्लिखित वैज्ञानिक अनुसंधान के लिए प्राप्त एवं प्रयुक्त दान का अपना विवरण प्रस्तुत नहीं करेगा; अथवा
- (घ) अपना अनुसंधान कार्य करना बंद कर देगा अथवा इसके अनुसंधान कार्य को जायज नहीं पाया जाएगा; अथवा
- (ङ) उक्त नियमावली के नियम 5 ग और 5घ के साथ पठित उक्त अधिनियम की धारा 35 की उपधारा (1) के खंड (ii) के प्रावधानों के अनुरूप नहीं होगा तथा उनका पालन नहीं करेगा।

[अधिसूचना सं. 227/2007/फा. सं. 203/63/2004-आ.क.नि-II]

दीपक गर्ग, अवर सचिव

New Delhi, the 21st August, 2007

**S.O. 2429.**—It is hereby notified for general information that the organization **Maharashtra Medical Research Society, Pune** has been approved by the Central Government for the purpose of clause (ii) of sub-section (1) of Section 35 of the Income-tax Act, 1961 (said Act), read with rule 5C and 5D of the Income-tax Rules, 1962 (said Rules) with effect from 1-4-2003 in the category of 'scientific research association' subject to the following conditions, namely :—

- (i) The sole objective of the approved 'scientific research association' shall be to undertake scientific research;
- (ii) The approved organization shall carry on the scientific research activity by itself;
- (iii) The approved organization shall maintain books of accounts and get such books audited by an accountant as defined in the explanation to sub-section (2) of Section 288 of the said Act and furnish the report of such audit duly

signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under sub-section (1) of Section 139 of the said Act;

- (iv) The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization :—

- (a) fails to maintain books of accounts referred to in sub-paragraph (iii) of paragraph 1; or
- (b) fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or
- (c) fails to furnish its statement of the donations received and amounts applied for scientific research referred to in sub-paragraph (iv) of paragraph 1; or
- (d) ceases to carry on its research activities or its research activities are not found to be genuine; or
- (e) ceases to conform to and comply with the provisions of clause (ii) of sub-section (1) of Section 35 of the said Act, read with rule 5C and 5D of the said Rules.

[Notification No. 227/2007/F. No. 203/63/2004-ITA-II]

DEEPAK GARG, Under Secy.

नई दिल्ली, 24 अगस्त, 2007

**का.आ. 2430.**—सर्वसाधारण की जानकारी के लिए एतद्वारा यह अधिसूचित किया जाता है कि संभाव्यता रिपोर्ट को तैयार करने के कार्य को करने के लिए अथवा परियोजना रिपोर्ट तैयार करने के लिए अथवा बाजार सर्वेक्षण अथवा अन्य कोई सर्वेक्षण करने के लिए अथवा आयकर अधिनियम, 1961 की धारा 35घ की उप-धारा (2) के खंड (क) में संदर्भित अभियांत्रिकीय सेवाओं के प्रयोजनार्थ इंजीनियर्स इंडिया लिमिटेड, नई दिल्ली को केन्द्र सरकार द्वारा आयकर अधिनियम, 1961 की धारा 35घ की उपधारा (2) के खंड (क) के प्रयोजनार्थ दिनांक 8-11-2005 से 7-11-2008 की अवधि के लिए अनुमोदित किया गया है।

[अधिसूचना सं. 236/2007/फा. सं. 225/93/2007-आ.क.नि-II]

सुरेन्द्र पाल, अवर सचिव

New Delhi, the 24th August, 2007

**S.O. 2430.**—It is hereby notified for general information that the organization **Engineers India Limited, New Delhi** has been approved by the Central Government for the purpose of clause (a) of sub-section (2) of Section 35D of the Income-tax Act, 1961, for the period from 8-11-2005 to 7-11-2008, for purposes of carrying out work for preparation of feasibility report or preparation of project report or the conducting of market survey or of any other survey or for the engineering services referred to in

clause (a) of Sub-section (2) of Section 35D of the Income-tax Act, 1961.

[Notification No. 236/2007/F. No. 225/93/2007-ITA-II]

SURENDER PAL, Under Secy.

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2431.—सर्वसाधारण की जानकारी के लिए एतद्द्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5ग और 5ड के साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उपधारा (1) के खंड (ii) के प्रयोजनार्थ 1-4-2003 से संगठन 'मंडके फाउंडेशन' मुम्बई, को निम्नलिखित शर्तों के अधीन आंशिक रूप से अनुसंधान कार्यकलापों में लगी 'अन्य संस्था' की श्रेणी में अनुमोदित किया गया है, अर्थात् :-

- (i) अनुमोदित संगठन को प्रदत्त राशि का उपयोग वैज्ञानिक अनुसंधान के लिए किया जाएगा;
- (ii) अनुमोदित संगठन अपने संकाय सदस्यों अथवा अपने नामांकित छात्रों के माध्यम से वैज्ञानिक अनुसंधान करेगा;
- (iii) अनुमोदित संगठन बही-खाता रखेगा तथा उक्त अधिनियम की धारा 288 की उप धारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से अपनी खाता-बही की लेखा परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप धारा (1) के अंतर्गत आय विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा।
- (iv) संगठन वैज्ञानिक अनुसंधान के लिए प्राप्त दान तथा प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा परीक्षा रिपोर्ट के साथ लेखा परीक्षक द्वारा विधिवत सत्यापित विवरण की प्रति प्रस्तुत करेगा।

2. केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि अनुमोदित संगठन :-

- (क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित लेखा-बही नहीं रखेगा; अथवा
- (ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अपनी लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करेगा; अथवा
- (ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में उल्लिखित वैज्ञानिक अनुसंधान के लिए प्राप्त एवं प्रयुक्त दान का अपना विवरण प्रस्तुत नहीं करेगा; अथवा
- (घ) अपना अनुसंधान कार्य करना बंद कर देगा अथवा इसके अनुसंधान कार्य को जायज नहीं पाया जाएगा; अथवा

(ड) उक्त नियमावली के नियम 5 ग और 5 ड के साथ पठित उक्त अधिनियम की धारा 35 की उपधारा (1) के खंड (ii) के प्रावधानों के अनुरूप नहीं होगा तथा उनका पालन नहीं करेगा।

[अधिसूचना सं. 235/2007/फा. सं. 203/5/2004-आ.आ. 11]

सुरेन्द्र पाल, अवर सचिव

New Delhi, the 24th August, 2007

S.O. 2431.—It is hereby notified for general information that the organization **Mandke Foundation, Mumbai** has been approved by the Central Government for the purpose of clause (ii) of Sub-section (1) of section 35 of the Income-tax Act, 1961 (said Act), read with rules 5C and 5E of the Income-tax Rules, 1962 (said Rules) with effect from 1-4-2003 in the category of 'other institution', partly engaged in research activities subject to the following conditions, namely :—

- (i) The sums paid to the approved organization shall be utilized for scientific research;
- (ii) The approved organization shall carry out scientific research through its faculty members or its enrolled students;
- (iii) The approved organization shall maintain books of accounts and get such books audited by an accountant as defined in the explanation to Sub-section (2) of section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under Sub-section (1) of section 139 of the said Act;
- (iv) The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization :—

- (a) fails to maintain books of accounts referred to in sub-paragraph (iii) of paragraph 1; or
- (b) fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or
- (c) fails to furnish its statement of the donations received and sums applied for Scientific research referred to in Sub-paragraph (iv) of paragraph 1; or
- (d) ceases to carry on its research activities or its research activities are not found to be genuine; or

- (e) ceases to conform to and comply with the provisions of clause (ii) of Sub-section (1) of section 35 of the said Act, read with rules 5C and 5E of the said Rules.

[Notification No. 235/2007/F. No. 203/5/2004-ITA-II]

SURENDER PAL, Under Secy.

नई दिल्ली, 24 अगस्त, 2007

**का.आ. 2432.**—सर्वसाधारण की जानकारी के लिए एतद्वारा यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा आयकर नियमावली, 1962 (उक्त नियमावली) के नियम 5 ग और 5 ड के साथ पठित आयकर अधिनियम, 1961 (उक्त अधिनियम) की धारा 35 की उपधारा (1) के खंड (ii) के प्रयोजनार्थ 1-4-2001 से संगठन 'दि गुजरात कैंसर सोसायटी', अहमदाबाद, को निम्नलिखित शर्तों के अधीन आंशिक रूप से अनुसंधान कार्यकलापों में लगी 'अन्य संस्था' की श्रेणी में अनुमोदित किया गया है, अर्थात् :—

- (i) अनुमोदित संगठन को प्रदत्त राशि का उपयोग वैज्ञानिक अनुसंधान के लिए किया जाएगा;
- (ii) अनुमोदित संगठन अपने संकाय सदस्यों अथवा अपने नामांकित छात्रों के माध्यम से वैज्ञानिक अनुसंधान करेगा;
- (iii) अनुमोदित संगठन बही-खाता रखेगा तथा उक्त अधिनियम की धारा 288 की उप धारा (2) के स्पष्टीकरण में यथा परिभाषित किसी लेखाकार से अपनी खाता-बही की लेखा परीक्षा कराएगा और उक्त अधिनियम की धारा 139 की उप धारा (1) के अंतर्गत आय विवरणी प्रस्तुत करने की नियत तिथि तक ऐसे लेखाकार द्वारा विधिवत सत्यापित एवं हस्ताक्षरित लेखा परीक्षा रिपोर्ट मामले में क्षेत्राधिकार रखने वाले आयकर आयुक्त अथवा आयकर निदेशक को प्रस्तुत करेगा।
- (iv) संगठन वैज्ञानिक अनुसंधान के लिए प्राप्त दान तथा प्रयुक्त राशि का अलग विवरण रखेगा और उपर्युक्त लेखा परीक्षा रिपोर्ट के साथ लेखा परीक्षक द्वारा विधिवत सत्यापित विवरण की प्रति प्रस्तुत करेगा।

2. केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि अनुमोदित संगठन :—

- (क) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित लेखा-बही नहीं रखेगा; अथवा
- (ख) पैराग्राफ 1 के उप-पैराग्राफ (iii) में उल्लिखित अपनी लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करेगा; अथवा
- (ग) पैराग्राफ 1 के उप-पैराग्राफ (iv) में उल्लिखित वैज्ञानिक अनुसंधान के लिए प्राप्त एवं प्रयुक्त दान का अपना विवरण प्रस्तुत नहीं करेगा; अथवा
- (घ) अपना अनुसंधान कार्य करना बंद कर देगा अथवा इसके अनुसंधान कार्य को जायज नहीं पाया जाएगा; अथवा
- (ङ) उक्त नियमावली के नियम 5 ग और 5 ड के साथ पठित उक्त अधिनियम की धारा 35 की उपधारा (1) के खंड (ii) के प्रावधानों के अनुरूप नहीं होगा तथा उनका पालन नहीं करेगा।

[अधिसूचना सं. 234/2007/फा. सं. 203/2/2003-आ.क.नि-II]

सुरेन्द्र पाल, अवर सचिव

New Delhi, the 24th August, 2007

**S.O. 2432.**—It is hereby notified for general information that the organization **The Gujarat Cancer Society, Ahmedabad** has been approved by the Central Government for the purpose of clause (ii) of Sub-section (1) of section 35 of the Income-tax Act, 1961 (said Act), read with rules 5C and 5E of the Income-tax Rules, 1962 (said Rules) with effect from 1-4-2001 in the category of 'other Institution', partly engaged in research activities subject to the following conditions, namely :—

- (i) The sums paid to the approved organization shall be utilized for scientific research;
- (ii) The approved organization shall carry out scientific research through its faculty members or its enrolled students;
- (iii) The approved organization shall maintain books of accounts and get such books audited by an accountant as defined in the explanation to Sub-section (2) of section 288 of the said Act and furnish the report of such audit duly signed and verified by such accountant to the Commissioner of Income-tax or the Director of Income-tax having jurisdiction over the case, by the due date of furnishing the return of income under Sub-section (1) of section 139 of the said Act;
- (iv) The approved organization shall maintain a separate statement of donations received and amounts applied for scientific research and a copy of such statement duly certified by the auditor shall accompany the report of audit referred to above.

2. The Central Government shall withdraw the approval if the approved organization :—

- (a) fails to maintain books of accounts referred to in sub-paragraph (iii) of paragraph 1; or
- (b) fails to furnish its audit report referred to in sub-paragraph (iii) of paragraph 1; or
- (c) fails to furnish its statement of the donations received and sums applied for scientific research referred to in Sub-paragraph (iv) of paragraph 1; or
- (d) ceases to carry on its research activities or its research activities are not found to be genuine; or
- (e) ceases to conform to and comply with the provisions of clause (ii) of Sub-section (1) of section 35 of the said Act, read with rules 5C and 5E of the said Rules.

[Notification No. 234/2007/F. No. 203/2/2003-ITA-II]

SURENDER PAL, Under Secy.

( वित्तीय सेवाएं विभाग )

New Delhi, the 27th August, 2007

नई दिल्ली, 27 अगस्त, 2007

का. आ. 2433.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्वारा, घोषणा करती है कि उक्त अधिनियम की धारा 10 की उपधारा (1) के खण्ड (ग) के उपखण्ड (झ) के उपबंध केनरा बैंक पर लागू नहीं होंगे, जहां तक उनका संबंध श्री एम. बी. एन. राव द्वारा स्कूल आफ इकनोमिक्स एंड फाइनेंसियल स्टडीज (एसईएफएस) इंस्टीट्यूट के बोर्ड में निदेशक का पदभार ग्रहण करने से है।

[फा. सं. 20/16/2000-बीओ-1]

जी. बी. सिंह, उप सचिव

(Department of Financial Services)

New Delhi, the 27th August, 2007

S.O. 2433.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Government of India on the recommendation of the Reserve Bank of India, hereby declare that the provisions of sub-clause (i) of clause (c) of sub-section (1) of Section 10 of the said Act shall not apply to Canara Bank in so far as it relates to taking up directorship of Shri M.B.N. Rao, on the Board of School of Economics and Financial Studies (SEFS) Institute.

[F.No. 20/16/2000-BO.I]

G.B. SINGH, Dy. Secy.

नई दिल्ली, 27 अगस्त, 2007

का. आ. 2434.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्वारा, घोषणा करती है कि उक्त अधिनियम की धारा 10 की उपधारा (1) के खण्ड (ग) के उपखण्ड (झ) के उपबंध बैंक ऑफ बड़ौदा पर लागू नहीं होंगे, जहां तक उनका संबंध डॉ. अनिल के. खंडेलवाल द्वारा नरसी मुंजी इंस्टीट्यूट आफ मैनेजमेंट स्टडीज (एनएमआईएमएस) यूनिवर्सिटी, मुम्बई के बोर्ड में निदेशक का पदभार ग्रहण करने से है।

[फा. सं. 20/10/2000-बीओ-1]

जी. बी. सिंह, उप सचिव

S.O. 2434.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Government of India on the recommendation of the Reserve Bank of India, hereby declare that the provisions of sub-clause (i) of clause (c) of sub-section (1) of Section 10 of the said Act shall not apply to Bank of Baroda in so far as it relates to taking up directorship of Dr. Anil K. Khandelwal, on the Board of Narsee Munjee Institute of Management Studies (NMIMS) University, Mumbai.

[F.No. 20/10/2000-BO.I]

G.B. SINGH, Dy. Secy.

नई दिल्ली, 27 अगस्त, 2007

का. आ. 2435.— बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्वारा, घोषणा करती है कि उक्त अधिनियम की धारा 10 की उपधारा (1) के खण्ड (ग) के उपखण्ड (झ) के उपबंध भारतीय स्टेट बैंक पर लागू नहीं होंगे, जहां तक उनका संबंध भारतीय स्टेट बैंक के अध्यक्ष श्री ओ. पी. भट्ट द्वारा जेवियर लेबर रिलेशन्स इंस्टीट्यूट (एक्सएलआरआई) के बोर्ड में निदेशक का पदभार ग्रहण करने से है।

[फा. सं. 20/4/2006-बीओ-1]

जी. बी. सिंह, उप सचिव

New Delhi, the 27th August, 2007

S.O. 2435.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Government of India on the recommendation of the Reserve Bank of India, hereby declare that the provisions of sub-clause (i) of clause (c) of sub-section (1) of Section 10 of the said Act shall not apply to State Bank of India in so far as it relates to taking up directorship of Shri O.P. Bhatt, Chairman, State Bank of India on the Board of Xavier Labour Relations Institute (XLRi).

[F.No. 20/4/2006-BO.I]

G.B. SINGH, Dy. Secy.

नई दिल्ली, 27 अगस्त, 2007

का. आ. 2436.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्वारा,

घोषणा करती है कि उक्त अधिनियम की धारा 10 की उपधारा (1) के खण्ड (ग) के उपखण्ड (झ) के उपबंध भारतीय स्टेट बैंक पर लागू नहीं होंगे, जहां तक उनका संबंध भारतीय स्टेट बैंक के अध्यक्ष श्री ओ. पी. भट्ट द्वारा हॉन्डयन काउंसिल फॉर रिसर्च ऑन इंटरनेशनल इकोनॉमिक रिलेशन्स (आईसीआरआईआर) के बोर्ड में निदेशक का पदभार ग्रहण करने से है।

[फा. सं. 20/4/2006-बीओ-1]

जी. बी. सिंह, उप सचिव

New Delhi, the 27th August, 2007

**S.O. 2436.**—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Government of India on the recommendation of the Reserve Bank of India, hereby declare that the provisions of sub-clause (i) of clause (c) of sub-section (1) of Section 10 of the said Act shall not apply to State Bank of India in so far as it relates to taking up directorship of Shri O.P. Bhatt, Chairman, State Bank of India on the Board of Governors of Indian Council for Research on International Economic Relations (ICRIER).

[F.No. 20/4/2006-BO.I]

G. B. SINGH, Dy. Secy.

वाणिज्य और उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 17 अगस्त, 2007

**क्र. अ. 2437.**—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12 के उपनियम (2) के अनुसरण में, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स ज्यो कैम लेबोरेट्रीज प्रा. लि., ज्यो कैम हाउस, 294 शाहीद भगत सिंह रोड, फोर्ट, मुम्बई-400001 को 22 जनवरी, 2007 से प्रभावी इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए वाणिज्य मंत्रालय, भारत सरकार की अधिसूचना सं. का. आ. 3975 और का. आ. 3978 तारीख 20 दिसम्बर, 1965 के साथ उगावद्ध अनुसूची में विनिर्दिष्ट खनिज और अयस्क (ग्रुप-I) अर्थात् लौह अयस्क और मैंगनीज अयस्क, फैंरो मैंगनीज सहित स्लेग, बॉक्साइट जिसके अंतर्गत केलसिड बॉक्साइड भी है, और (ग्रुप-II) अर्थात् मैंगनीज डाइआक्साइड, क्रोम अयस्क जिसके अंतर्गत क्रोम सान्द्र जिंक अयस्क जिसके अंतर्गत जिंक सान्द्र, मैंगनेसाइट जिसके अंतर्गत मृत तापित भी हैं और विस्तारित मैंगनेसाइट, बैरिटाइट, रेड ऑक्साइड, रामरज, स्टिरेटाइट

और फेल्डस्पार निर्यात से पूर्व निम्नलिखित शर्तों के अधीन मुम्बई में उक्त खनिजों और अयस्कों का निरीक्षण करने के लिए एक अभिकरण के रूप में मान्यता देती है, अर्थात्:—

- (i) मैसर्स ज्यो कैम लेबोरेट्रीज प्रा. लि., मुम्बई खनिज और अयस्क ग्रुप-I का निर्यात (निरीक्षण) नियम, 1965 खनिज और अयस्क ग्रुप-II का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अंतर्गत निरीक्षण का प्रमाण-पत्र देने के लिए उनके द्वारा अपनाई गई पद्धति की जांच करने के लिए, इस संबंध में निर्यात निरीक्षण परिषद द्वारा नामित अधिकारियों को पर्याप्त सुविधाएं देगी;
- (ii) मैसर्स ज्यो कैम लेबोरेट्रीज प्रा. लि. मुम्बई इस अधिसूचना के अधीन अपने कृत्यों के पालन में निदेशक (निरीक्षण एवं क्वालिटी नियंत्रण) निर्यात निरीक्षण परिषद द्वारा समय-समय पर लिखित में दिए गए निर्देशों से आबद्ध होंगे।

[फा. सं. 5/8/2007-ईआई एंड ईपी]

वी. के. गाबा, उपसचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 17th August, 2007

**S.O. 2437.**—In exercise of the powers conferred by the sub-section (1) of Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), and in pursuance of sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) rules, 1964, the Central Government hereby recognises M/s Geo Chem Laboratories Pvt. Limited, Geo-Chem House, 294, Shahid Bhagat Singh Road, Fort, Mumbai 400001 an agency for a period of three years with effect from the 22nd January, 2007 through publication of this notification in the Official Gazette, for inspection of Minerals and Ores (Group-I), namely, Iron Ore, Manganese Ore, Ferro manganese including Ferro manganese slag, Bauxite including Calcined Bauxite; and (Group-II), namely, Manganese Dioxide, Chrome Ore including Chrome concentrates, Zinc Ores including zinc concentrates, Magnesite including dead burnt and calcined Magnesite, Barytes, Red Oxide, Yellow Ochre, Steatite and Feldspar as specified in the Schedules annexed to the notifications of the Government of India in the Ministry of Commerce numbers S.O. 3975 and S.O. 3978 respectively both dated the 20th December, 1965, prior to the export, of the said

Minerals and Ores at Mumbai, subject to the following conditions, namely :—

- (i) that M/s. Geo Chem Laboratories Pvt. Ltd., Mumbai shall give adequate facilities to the officers nominated by the Export Inspection council in this behalf to examine the method of inspection followed by them in granting the certificate of inspection under rule 4 of the Export of Minerals and Ores Group I (Inspection) Rules, 1965 and the export of Minerals and Ores-Group II (Inspection) Rules, 1965;
- (ii) that M/s. Geo Chem Laboratories Pvt. Ltd., Mumbai in the performance of their function under this notification shall be bound by such directives as the Director (Inspection and Quality Control), Export Inspection Council may give in writing from time to time.

[F.No. 5/8/2007-EI&EP]

V. K. GAUBA, Dy. Secy.

नई दिल्ली, 17 अगस्त, 2007

का. आ. 2438.—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12 के उपनियम (2) के अनुसरण में, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स थेराप्यूटिक्स केमिकल रिसर्च कार्पोरेशन, 26-08-69, राजा राम मोहन राय रोड, विशाखापत्तनम्-530001 को इस अधिसूचना के प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए वाणिज्य मंत्रालय, की अधिसूचना सं. का. आ. 3975 तारीख 20 दिसम्बर, 1965 में उपाबद्ध अनुसूची में विनिर्दिष्ट खनिज और अयस्क (समूह-1) अर्थात् लौह अयस्क के निर्यात से पूर्व निम्नलिखित शर्तों के अधीन विशाखापत्तनम् में निरीक्षण करने के लिए एक अभिकरण के रूप में मान्यता प्रदान करती है, अर्थात् :—

- (i) यह कि मैसर्स थेराप्यूटिक्स केमिकल रिसर्च कार्पोरेशन, विशाखापत्तनम् खनिज और अयस्क समूह-1 (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण का प्रमाण-पत्र देने के लिए उनके द्वारा अपनाई गई पद्धति की जांच करने के लिए, इस निमित्त निर्यात निरीक्षण परिषद द्वारा नाम निर्देशित अधिकारियों को पर्याप्त सुविधाएं देगी;
- (ii) यह कि मैसर्स थेराप्यूटिक्स केमिकल रिसर्च कार्पोरेशन, विशाखापत्तनम् इस अधिसूचना के अधीन अपने कृत्यों

के अनुपालन में निदेशक (निरीक्षण और क्वालिटी नियंत्रण) निर्यात निरीक्षण परिषद द्वारा समय-समय पर लिखित में दिए गए निर्देशों से आबद्ध होंगी;

[फा. सं. 5/7/2007-ईआई एंड ईपी]

बी. के. गाबा, उपसचिव

New Delhi, the 17th August, 2007

S.O. 2438.—In exercise of the powers conferred by sub-section (1) of Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), and in pursuance of sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognises for a period of three years from the date of publication of this notification, M/s. Therapeutics Chemical Research Corporation, 26-8-69, Raja Ram Mohan Roy Road, Visakhapatnam-530001, as an agency for inspection of Minerals and Ores (Group-I), namely, Iron Ore, specified in the Schedule annexed to the notification in the Ministry of Commerce number S.O. 3975 dated the 20th December, 1965, prior to export at Visakhapatnam, subject to the following conditions, namely :—

- (i) that M/s. Therapeutics Chemical Research Corporation, Visakhapatnam, shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of Inspection followed by them in granting the certificate of inspection under rule 4 of the Export of Minerals and Ores Group I (Inspection) Rules, 1965;
- (ii) that M/s. Therapeutics Chemical Research Corporation, Visakhapatnam in the performance of their function under this notification shall be bound by such directives (Inspection and Quality Control), Export Inspection Council may give in writing from time to time.

[F.No. 5/7/2007-EI&EP]

V. K. GAUBA, Dy. Secy.

नागर विमानन मंत्रालय

नई दिल्ली, 20 अगस्त, 2007

का. आ. 2439.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग), नियम 1976 के नियम 10 के उपनियम (4) के अनुसरण में नागर विमानन मंत्रालय के अधीन उपक्रम, निदेशक, विमानपत्तन का कार्यालय, जयप्रकाश नारायण अन्तरराष्ट्रीय

हवाई अड्डा, पटना जिनके 80 प्रतिशत से अधिक कर्मचारी-वृद्ध ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

[सं. ई. 11020/6/2006-रा.भा.]

चन्द्रभान नारनौली, निदेशक (राजभाषा)

## MINISTRY OF CIVIL AVIATION

New Delhi, the 20th August, 2007

**S.O. 2439.**—In pursuance of sub rule (4) of rule 10 of the official language (use of official purpose of the union) Rules, 1976 the Central Government hereby notified office of the Director, Airport Authority of India, Jai Prakash Narayan International Airport, Patna, the public sector undertaking of Ministry of Civil Aviation. Whereof more than 80% staff have acquired the working knowledge of Hindi.

[No. E-11020/6/2006-Hindi]

C.B. NARNAULI, Director (OL)

विदेश मंत्रालय

( सी.पी.वी. प्रभाग )

नई दिल्ली, 24 अगस्त, 2007

**का. आ. 2440.**—राजनयिक कौंसली अधिकारी (शपथ एवं शुल्क) अधिनियम 1948 (1948 का 41वां) व 2 के अंक (क) के

अनुसरण में केन्द्रीय सरकार एतद्वारा भारत का राजदूतावास दोहा में श्री प्रमोद कुमार गर्ग सहायक, श्री ए. के. श्रीवास्तव, सहायक और श्री संदीप सिंह सहायक को 24-8-2007 से सहायक कौंसली अधिकारी का कार्य करने हेतु प्राधिकृत करती है।

[सं. टी.-4330/01/2006]

प्रीतम लाल, अवर सचिव(कौंसु.)

## MINISTRY OF EXTERNAL AFFAIRS

(C.P.V. Division)

New Delhi, the 24th August, 2007

**S.O. 2440.**—In pursuance of clause (a) of the Section 2 of the Diplomatic and Consular officers (Oaths and fees) Act, 1948, the Central Government hereby authorize S/Shri Pramod Kumar Garg, A.K. Srivastava, and Sandeep Singh, Assistants to perform the duties of Assistant Consular Officer in the Embassy of India, Doha with effect from 24 August, 2007.

[No. T.4330/1/2006]

PRITAM LAL, Under Secy. (Consular)

## स्वास्थ्य और परिवार कल्याण मंत्रालय

( स्वास्थ्य विभाग )

नई दिल्ली, 27 जून, 2007

**का. आ. 2441.**—भारतीय आयुर्विज्ञान परिषद अधिनियम, 1956 (1956 का 102) की धारा 11 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार भारतीय आयुर्विज्ञान परिषद से परामर्श करने के बाद एतद्वारा उक्त अधिनियम की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है, अर्थात् :

उक्त अनुसूची में—

(क) “मद्रास विश्वविद्यालय” और “तमिलनाडु डॉ. एम. जी. आर विश्वविद्यालय” के सामने ‘मान्यताप्राप्त आयुर्विज्ञान अर्हता’ (इसके बाद स्तम्भ (2) के रूप में संदर्भित) शीर्ष के अन्तर्गत अन्तिम प्रविष्टि और ‘पंजीकरण के लिए संक्षेपण’ (इसके बाद स्तम्भ (3) के रूप में संदर्भित) शीर्ष के अन्तर्गत उससे संबद्ध प्रविष्टि के बाद, निम्नलिखित रखा जाएगा, अर्थात् :—

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“डाक्टर ऑफ मेडिसिन (शरीर क्रिया विज्ञान)

एम. डी. (शरीर क्रिया विज्ञान)

(यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह स्टेनले मेडिकल कालेज, चेन्नई द्वारा सितम्बर, 2004 में अथवा उसके बाद प्रदान की गई हो)

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मास्टर ऑफ सर्जरी (सामान्य शल्य चिकित्सा)	एम. एस. (सामान्य शल्य चिकित्सा) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह चेंगलपट्टु मेडिकल कालेज, चेंगलपट्टु द्वारा जुलाई, 1997 में अथवा उसके बाद प्रदान की गई हो)
डाक्टर ऑफ मेडिसिन (जनरल मेडिसिन)	एम.डी. (मेडिसिन) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह गवर्नमेंट मोहन कुमारमंगलम मेडिकल कालेज, सालेम द्वारा अगस्त, 2005 में अथवा उसके बाद प्रदान की गई हो)
मास्टर ऑफ सर्जरी (नेत्र विज्ञान)	एम.एस. (नेत्र विज्ञान) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह कोयम्बटूर मेडिकल कालेज, कोयम्बटूर द्वारा अगस्त, 2005 में अथवा उसके बाद प्रदान की गई हो)
नेत्र विज्ञान में डिप्लोमा	डी.ओ. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह कोयम्बटूर मेडिकल कालेज, कोयम्बटूर द्वारा अगस्त, 2005 में अथवा उसके बाद प्रदान की गई हो)

(ख) “राजीव गांधी स्वास्थ्य विज्ञान विश्वविद्यालय, बंगलौर” के सामने ‘मान्यता प्राप्त आयुर्विज्ञान अर्हता’ (इसके बाद स्तंभ (2) के रूप में के रूप में संदर्भित) शीर्ष के अन्तर्गत अन्तिम प्रविष्टि और ‘पंजीकरण के लिए संक्षेपण’ (इसके बाद स्तंभ (3) के रूप में संदर्भित) शीर्ष के अन्तर्गत उससे संबद्ध प्रविष्टि के बाद, निम्नलिखित रखा जाएगा, अर्थात् :-

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डाक्टर ऑफ मेडिसिन (रेडियो थिरेपी)	एम. डी. (रेडियो थिरेपी) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह एम.एस. रमैय्या मेडिकल कालेज, बंगलौर द्वारा अप्रैल, 2005 में अथवा उसके बाद प्रदान की गई हो)
प्रसूति एवं स्त्री रोग विज्ञान में डिप्लोमा	डी.जी.ओ. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह एम.एस. रमैय्या मेडिकल कालेज, बंगलौर द्वारा मार्च, 2005 में अथवा उसके बाद प्रदान की गई हो)
मास्टर ऑफ सर्जरी (अस्थि विज्ञान) और अस्थि विज्ञान में डिप्लोमा	एम.एस. (अस्थि विज्ञान) और अस्थि विज्ञान में डिप्लोमा (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह एम.आर. मेडिकल कालेज, गुलबर्गा द्वारा जून, 2005 में अथवा उसके बाद प्रदान की गई हो)
डाक्टर ऑफ मेडिसिन (सामान्य चिकित्सा)	एम. डी. (सामान्य चिकित्सा) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह एम.आर. मेडिकल कालेज, गुलबर्गा द्वारा जून, 2005 में अथवा उसके बाद प्रदान की गई हो)
नैदानिक विकृति विज्ञान में डिप्लोमा	डी. सी. पी. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह एम.आर. मेडिकल कालेज, गुलबर्गा द्वारा सितम्बर, 1998 में अथवा उसके बाद प्रदान की गई हो)
डाक्टर ऑफ मेडिसिन (संवेदनाहरण)	एम. डी. (संवेदनाहरण) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह श्री सिद्धार्थ मेडिकल कालेज, तुमकुर द्वारा अप्रैल, 2005 में अथवा उसके बाद प्रदान की गई हो)
डाक्टर ऑफ मेडिसिन (न्यायिक चिकित्सा)	एम. डी. (न्यायिक चिकित्सा) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह कैप गोडा आयुर्विज्ञान संस्थान, बंगलौर द्वारा मई, 2005 में अथवा उसके बाद प्रदान की गई हो)
डाक्टर ऑफ मेडिसिन (कार्डियोलॉजी)	डी एम (कार्डियोलॉजी) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सेंट जॉन मेडिकल कालेज, बंगलौर, द्वारा मार्च, 2005 में अथवा उसके बाद प्रदान की गई हो)

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डाक्टर ऑफ मेडिसिन (मनश्चिकित्सा)

एम. डी. (मनश्चिकित्सा)

(यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सेंट जॉन मेडिकल कालेज, बंगलौर द्वारा अप्रैल, 2005 में अथवा उसके बाद प्रदान की गई हो)

संवेदनाहरण में डिप्लोमा

डी. ए.

(यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह अल-अमीन मेडिकल कालेज, बीजापुर द्वारा जून, 2005 में अथवा उसके बाद प्रदान की गई हो)

(ग) "दिल्ली विश्वविद्यालय" के सामने 'मान्यताप्राप्त आयुर्विज्ञान अर्हता' [इसके बाद स्तंभ (2) के रूप में संदर्भित] शीर्ष के अन्तर्गत अन्तिम प्रविष्टि और 'पंजीकरण के लिए संक्षेपण' [इसके बाद स्तंभ (3) के रूप में संदर्भित] शीर्ष के अन्तर्गत उससे संबद्ध प्रविष्टि के बाद, निम्नलिखित रखा जाएगा, अर्थात् :-

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डाक्टर ऑफ मेडिसिन (न्यायिक चिकित्सा)

एम. डी. (न्यायिक चिकित्सा)

(यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह यूनिवर्सिटी कालेज ऑफ मेडिकल साइंसेज, दिल्ली द्वारा जून, 1987 में अथवा उसके बाद प्रदान की गई हो)

मास्टर ऑफ सर्जरी (अस्थि विज्ञान)

एम. एस. (अस्थि विज्ञान)

(यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह डा. राम मनोहर लोहिया अस्पताल, नई दिल्ली द्वारा 1986 में अथवा उसके बाद प्रदान की गई हो)

शिशु स्वास्थ्य में डिप्लोमा

डी.सी.एच.

(यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह डा. राम मनोहर लोहिया अस्पताल, नई दिल्ली द्वारा 1968 में अथवा उसके बाद प्रदान की गई हो)

नेत्र विज्ञान में डिप्लोमा

डी.ओ.

(यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह डा. राम मनोहर लोहिया अस्पताल, नई दिल्ली द्वारा अप्रैल, 2005 में अथवा उसके बाद प्रदान की गई हो)

मास्टर ऑफ सर्जरी (सामान्य सर्जरी)

एम.एस. (सामान्य सर्जरी)

(यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह डा. राम मनोहर लोहिया अस्पताल, नई दिल्ली द्वारा 1969 में अथवा उसके बाद प्रदान की गई हो)

डाक्टर ऑफ मेडिसिन (जनरल मेडिसिन)

एम.डी. (जनरल मेडिसिन)

(यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह डा. राम मनोहर लोहिया अस्पताल, नई दिल्ली द्वारा 1966 में अथवा उसके बाद प्रदान की गई हो)

डाक्टर ऑफ मेडिसिन (रेडियो डायग्नोसिस)

एम.डी. (रेडियो डायग्नोसिस)

(यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह डा. राम मनोहर लोहिया अस्पताल, नई दिल्ली द्वारा 1971 में अथवा उसके बाद प्रदान की गई हो)

रतिज रोग विज्ञान और त्वचा विज्ञान डिप्लोमा

डी.वी.डी.

(यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह डा. राम मनोहर लोहिया अस्पताल, नई दिल्ली द्वारा 1969 में अथवा उसके बाद प्रदान की गई हो)

त्वचा विज्ञान, रतिज रोग विज्ञान एवं कुष्ठ में डिप्लोमा

डी.डी.वी.एल.

(यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह डा. राम मनोहर लोहिया अस्पताल, नई दिल्ली द्वारा 1969 में अथवा उसके बाद प्रदान की गई हो)

डाक्टर ऑफ मेडिसिन (संवेदनाहरण)

एम.डी. (संवेदनाहरण)

(यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह डा. राम मनोहर लोहिया अस्पताल, नई दिल्ली द्वारा 1968 में अथवा उसके बाद प्रदान की गई हो)

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मास्टर ऑफ सर्जरी (सामान्य सर्जरी)	एम.एस. (सामान्य सर्जरी) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह मेना अस्पताल, दिल्ली छावनी, दिल्ली द्वारा 1966 में अथवा उसके बाद प्रदान की गई हो)
लेरिंगोलाजी और ओटोलाजी में डिप्लोमा	डी.एल.ओ. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह मेना अस्पताल, दिल्ली छावनी, दिल्ली द्वारा 1983 में अथवा उसके बाद प्रदान की गई हो)
मास्टर ऑफ सर्जरी (अस्थि विज्ञान)	एम.डी. (अस्थि विज्ञान) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह लेडी हार्पिंग मेडिकल कालेज, नई दिल्ली द्वारा 1977 में अथवा उसके बाद प्रदान की गई हो)
डाक्टर ऑफ मेडिसिन (संवेदनाहरण)	एम.डी. (संवेदनाहरण) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सफदरजंग अस्पताल, नई दिल्ली द्वारा 1961 में अथवा उसके बाद प्रदान की गई हो)
संवेदनाहरण विज्ञान में डिप्लोमा	डी.ए. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सफदरजंग अस्पताल, नई दिल्ली द्वारा 1961 में अथवा उसके बाद प्रदान की गई हो)
लेरिंगोलाजी और ओटोलाजी में डिप्लोमा	डी.एल.ओ. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सफदरजंग अस्पताल, नई दिल्ली द्वारा 1965 में अथवा उसके बाद प्रदान की गई हो)
शिशु स्वास्थ्य में डिप्लोमा	डी.सी.एच. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सफदरजंग अस्पताल, नई दिल्ली द्वारा 1962 में अथवा उसके बाद प्रदान की गई हो)
रतिज रोग विज्ञान और त्वचा विज्ञान में डिप्लोमा	डी.बी.डी. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सफदरजंग अस्पताल, नई दिल्ली द्वारा 1968 में अथवा उसके बाद प्रदान की गई हो)
त्वचा विज्ञान, रतिज रोग विज्ञान एवं कुष्ठ में डिप्लोमा	डी.डी.बी.एल. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सफदरजंग अस्पताल, नई दिल्ली द्वारा 1968 में अथवा उसके बाद प्रदान की गई हो)
संवेदनाहरण विज्ञान में डिप्लोमा	डी.ए. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह हिन्दूराव अस्पताल, नई दिल्ली द्वारा 1968 में अथवा उसके बाद प्रदान की गई हो)

(घ) “नागपुर विश्वविद्यालय” के सामने ‘मान्यताप्राप्त आयुर्विज्ञान अर्हता’ [इसके बाद स्तंभ (2) के रूप में संदर्भित] शीर्ष के अन्तर्गत अन्तिम प्रविष्टि और ‘पंजीकरण के लिए संक्षेपण’ [इसके बाद स्तंभ (3) के रूप में संदर्भित] शीर्ष के अन्तर्गत उससे संबद्ध प्रविष्टि के बाद, निम्नलिखित रखा जाएगा, अर्थात् :-

2	3
प्रसूति और स्त्री रोग विज्ञान में डिप्लोमा	डी.जी.ओ. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह जे. एल. एन. मेडिकल कालेज स्वांगी, वर्धा द्वारा जून, 2005 में अथवा उसके बाद प्रदान की गई हो)
डाक्टर ऑफ मेडिसिन (सामान्य चिकित्सा)	एम.डी. (सामान्य चिकित्सा) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह स्टेनले जे. एल. एन. मेडिकल कालेज स्वांगी, वर्धा द्वारा नवम्बर, 2003 में अथवा उसके बाद प्रदान की गई हो)

(ड) “पंजाब विश्वविद्यालय” के सामने ‘मान्यताप्राप्त आयुर्विज्ञान अर्हता’ [इसके बाद स्तंभ (2) के रूप में संदर्भित] शीर्ष के अन्तर्गत अन्तिम प्रविष्टि और ‘पंजीकरण के लिए संक्षेपण’ [इसके पश्चात् स्तंभ (3) के रूप में संदर्भित] शीर्ष के अन्तर्गत उससे संबद्ध प्रविष्टि के बाद, निम्नलिखित रखा जाएगा, अर्थात् :-

2	3
मास्टर ऑफ सर्जरी (नेत्र विज्ञान)	एम.एस. (नेत्र विज्ञान) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह क्रिश्चियन मेडिकल कालेज, लुधियाना द्वारा दिसम्बर, 1985 से दिसम्बर, 1999 में अथवा उसके बाद प्रदान की गई हो)
डाक्टर ऑफ मेडिसिन (शरीर क्रिया विज्ञान)	एम.डी. (शरीर क्रिया विज्ञान) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह क्रिश्चियन मेडिकल कालेज, लुधियाना द्वारा 1996 में अथवा उसके बाद प्रदान की गई हो)
डाक्टर ऑफ मेडिसिन (शरीर क्रिया विज्ञान)	एम.डी. (शरीर क्रिया विज्ञान) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह दयानन्द क्रिश्चियन मेडिकल कालेज, लुधियाना द्वारा 1984 से 1999 में अथवा उसके बाद प्रदान की गई हो)

(च) “बाबा फरीद यूनिवर्सिटी ऑफ हेल्थ साइंसेस, फरीदकोट” के सामने, ‘मान्यताप्राप्त चिकित्सा अर्हता’ [इसके पश्चात् स्तंभ (2) के रूप में संदर्भित] के अन्तर्गत के सामने, अन्तिम प्रविष्टि तथा शीर्षक ‘पंजीकरण के लिए संक्षेपण’ [इसके बाद स्तंभ (3) के रूप में संदर्भित] के अन्तर्गत उससे संबंधित प्रविष्टि के पश्चात्, निम्नलिखित जोड़ा जाएगा, अर्थात् :-

2	3
मास्टर ऑफ सर्जरी (नेत्र विज्ञान)	एम.एस. (नेत्र विज्ञान) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह क्रिश्चियन मेडिकल कालेज, लुधियाना द्वारा जनवरी, 2000 में अथवा उसके बाद प्रदान की गई हो)
डाक्टर ऑफ मेडिसिन (शरीर क्रिया विज्ञान)	एम.डी. (शरीर क्रिया विज्ञान) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह दयानन्द क्रिश्चियन मेडिकल कालेज, लुधियाना द्वारा 2000 में अथवा उसके बाद प्रदान की गई हो)

(छ) “गुवाहाटी विश्वविद्यालय और असम विश्वविद्यालय” के सामने, ‘मान्यताप्राप्त चिकित्सा अर्हता’ [इसके पश्चात् स्तंभ (2) के रूप में संदर्भित] के अन्तर्गत अन्तिम प्रविष्टि तथा शीर्षक ‘पंजीकरण के लिए संक्षेपण’ [इसके बाद स्तंभ (3) के रूप में संदर्भित] के अधीन उससे संबंधित प्रविष्टि के पश्चात्, निम्नलिखित जोड़ा जाएगा, अर्थात् :-

2	3
मास्टर ऑफ सर्जरी (ओटोरिनोलरीन्गोलोजी)	एम.एस. (ई. एन. टी.) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सिल्वर मेडिकल कालेज, सिल्वर द्वारा 1988 में अथवा उसके बाद प्रदान की गई हो)
मास्टर ऑफ सर्जरी (जनरल सर्जरी)	एम.एस. (जनरल सर्जरी) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सिल्वर मेडिकल कालेज, सिल्वर द्वारा 1988 में अथवा उसके बाद प्रदान की गई हो)
मास्टर ऑफ सर्जरी (नेत्र विज्ञान)	एम.एस. (नेत्र विज्ञान) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सिल्वर मेडिकल कालेज, सिल्वर द्वारा 1988 में अथवा उसके बाद प्रदान की गई हो)
नेत्र विज्ञान में डिप्लोमा	डी. ओ. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सिल्वर मेडिकल कालेज, सिल्वर द्वारा 1988 में अथवा उसके बाद प्रदान की गई हो)

(ज) “राजस्थान विश्वविद्यालय” के सामने, ‘मान्यताप्राप्त चिकित्सा अर्हता’ [इसके पश्चात् स्तंभ (2) के रूप में उल्लिखित] के अन्तर्गत अन्तिम प्रविष्टि तथा शीर्षक ‘पंजीकरण के लिए संक्षेपण’ [इसके पश्चात् स्तंभ (3) के रूप में उल्लिखित] के अन्तर्गत उससे संबंधित प्रविष्टि के बाद, निम्नलिखित जोड़ा जाएगा, अर्थात् :-

2	3
डाक्टर ऑफ मेडिसिन (शरीर क्रिया विज्ञान)	एम.डी. (शरीर क्रिया विज्ञान) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह डा. एस. एन. मेडिकल कालेज, जोधपुर द्वारा 1977 में अथवा उसके बाद प्रदान की गई हो)
डिप्लोमा इन चाइल्ड हेल्थ	डी. सी. एच. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह एस.एम.एस. मेडिकल कालेज, जयपुर द्वारा 1987 में अथवा उसके बाद प्रदान की गई हो)
मास्टर ऑफ सर्जरी (विकलांग विज्ञान)	एम.एस. (विकलांग विज्ञान) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह जे.एल.एन. मेडिकल कालेज, अजमेर द्वारा 1983 में अथवा उसके बाद प्रदान की गई हो)

(झ) “कलकत्ता विश्वविद्यालय” के सामने, ‘मान्यताप्राप्त चिकित्सा अर्हता’ [इसके पश्चात् स्तंभ (2) के रूप में उल्लिखित] के अन्तर्गत अन्तिम प्रविष्टि तथा शीर्षक ‘पंजीकरण के लिए संक्षेपण’ [इसके पश्चात् स्तंभ (3) के रूप में उल्लिखित] के अन्तर्गत उससे संबंधित प्रविष्टि के बाद, निम्नलिखित जोड़ा जाएगा, अर्थात् :-

2	3
डाक्टर ऑफ मेडिसिन (क्षय रोग एवं स्वसनी रोग)	एम.डी. (क्षय रोग एवं स्वसनी रोग) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह एन.आर.एस. मेडिकल कालेज, कोलकाता द्वारा 1975 में अथवा उसके बाद प्रदान की गई हो)

(ञ) “सौराष्ट्र विश्वविद्यालय” के सामने, ‘मान्यताप्राप्त चिकित्सा अर्हता’ [इसके पश्चात् स्तंभ (2) के रूप में उल्लिखित] के अन्तर्गत अन्तिम प्रविष्टि तथा शीर्षक ‘पंजीकरण के लिए संक्षेपण’ [इसके पश्चात् स्तंभ (3) के रूप में उल्लिखित] के अन्तर्गत उससे संबंधित प्रविष्टि के बाद, निम्नलिखित जोड़ा जाएगा, अर्थात् :-

2	3
डाक्टर ऑफ मेडिसिन (जनरल मेडिसिन)	एम.डी. (जनरल मेडिसिन) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह पंडित दीनदयाल उपाध्याय मेडिकल कालेज, राजकोट द्वारा दिसम्बर, 2004 में अथवा उसके बाद प्रदान की गई हो)

(ट) “गुजरात विश्वविद्यालय” के सामने, ‘मान्यताप्राप्त चिकित्सा अर्हता’ [इसके पश्चात् स्तंभ (2) के रूप में उल्लिखित] के अन्तर्गत अन्तिम प्रविष्टि तथा शीर्षक ‘पंजीकरण के लिए संक्षेपण’ [इसके पश्चात् स्तंभ (3) के रूप में उल्लिखित] के अन्तर्गत उससे संबंधित प्रविष्टि के बाद, निम्नलिखित जोड़ा जाएगा, अर्थात् :-

2	3
डाक्टर ऑफ मेडिसिन (संवेदनाहरण विज्ञान)	एम.डी. (संवेदनाहरण विज्ञान) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह श्रीमती एन.एच.एल. म्यूनिसपल मेडिकल कालेज, अहमदाबाद द्वारा 1967 में अथवा उसके बाद प्रदान की गई हो)
संवेदनाहरण में डिप्लोमा	डी. ए. (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह श्रीमती एन.एच.एल. म्यूनिसपल मेडिकल कालेज, अहमदाबाद द्वारा 1966 में अथवा उसके बाद प्रदान की गई हो)

2	3
डाक्टर ऑफ मेडिसिन (शरीर क्रिया विज्ञान)	एम.डी. (शरीर क्रिया विज्ञान) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह श्रीमती एन.एच.एल. म्यूनिसपल मेडिकल कालेज, अहमदाबाद द्वारा 1973 में अथवा उसके बाद प्रदान की गई हो)

(ध) “डा. बाबा साहेब अम्बेडकर मराठवाड़ा विश्वविद्यालय” के सामने, ‘मान्यताप्राप्त चिकित्सा अर्हता’ [इसके पश्चात् स्तंभ (2) के रूप में उल्लिखित] के अन्तर्गत अन्तिम प्रविष्टि तथा शीर्षक ‘पंजीकरण के लिए संक्षेपण’ [इसके पश्चात् स्तंभ (3) के रूप में उल्लिखित] के अन्तर्गत इससे संबंधित प्रविष्टि के बाद, निम्नलिखित जोड़ा जाएगा, अर्थात् :-

2	3
डाक्टर ऑफ मेडिसिन (प्रसूति एवं स्त्री रोग विज्ञान)	एम.डी. (प्रसूति एवं स्त्री रोग विज्ञान) (यह एक मान्यताप्राप्त आयुर्विज्ञान अर्हता होगी यदि यह एम. जी. एम. मेडिकल कालेज, औरंगाबाद द्वारा अगस्त, 2005 में अथवा उसके बाद प्रदान की गई हो)

[सं. यू. 12012/6/2006-एम ई (पी-II)]

एस. के. मिश्रा, अवर सचिव

## MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

New Delhi, the 27th June, 2007

**S.O. 2441.**—In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said Schedule—

(a) against “Madras University” and “The Tamil Nadu Dr. M.G.R. University”, under the heading ‘Recognized Medical Qualification’ [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)], the following shall be inserted, namely :—

2	3
“Doctor of Medicine (Physiology)	M.D. (Physiology) (This shall be a recognized medical qualification when granted by Stanley Medical College, Chennai on or after Sep., 2004)
Master of Surgery (General Surgery)	M.S. (General Surgery) (This shall be a recognized medical qualification when granted by Chengalpattu Medical College, Chengalpattu on or after July, 1997)
Doctor of Medicine (General Medicine)	M.D. (Medicine) (This shall be a recognized medical qualification when granted by Govt. Mohan Kumarmangalam Medical College, Salem on or after August, 2005)
Master of Surgery (Ophthalmology)	M.S. (Ophthalmology) (This shall be a recognized medical qualification when granted by Coimbatore Medical College, Coimbatore on or after August, 2005)
Diploma in Ophthalmology	D.O. (This shall be a recognized medical qualification when granted by Coimbatore Medical College, Coimbatore on or after August, 2005)

(b) against "Rajiv Gandhi University of Health Sciences, Bangalore", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—

2	3
"Doctor of Medicine (Radiotherapy)"	M.D. (Radiotherapy) (This shall be a recognized medical qualification when granted by M. S. Ramaiah Medical College, Bangalore on or after April, 2005)
Diploma in Gynaecology & Obstetrics"	D.G.O. (This shall be a recognized medical qualification when granted by M. S. Ramaiah Medical College, Bangalore on or after March, 2005)
Master of Surgery (Orthopedics) & Diploma in Orthopedics	M.S. (Orthopedics) & D. Orthopedics (This shall be a recognized medical qualification when granted by M. R. Medical College, Gulbarga on or after June, 2005)
Doctor of Medicine (General Medicine)	M.D. (General Medicine) (This shall be a recognized medical qualification when granted by M. R. Ramaiah Medical College, Gulbarga on or after June, 2005)
Diploma in Clinical Pathology	D.C.P. (This shall be a recognized medical qualification when granted by M. R. Medical College, Gulbarga on or after Sept., 1998)
Doctor of Medicine (Anaesthesia)	M.D. (Anaesthesia) (This shall be a recognized medical qualification when granted by Sree Sidhartha Medical College, Tumkur on or after April, 2005)
Doctor of Medicine (Forensic Medicine)	M.D. (Forensic Medicine) (This shall be a recognized medical qualification when granted by Kempegowda Instt. of Medical Sciences, Bangalore on or after May, 2005)
Doctor of Medicine (Cardiology)	D.M. (Cardiology) (This shall be a recognized medical qualification when granted by St. John's Medical College, Bangalore on or after March, 2005)
Doctor of Medicine (Psychiatry)	M.D. (Psychiatry) (This shall be a recognized medical qualification when granted by St. John's Medical College, Bangalore on or after April, 2005)
Diploma in Anaesthesia	D.A. (This shall be a recognized medical qualification when granted by Al-Ameen Medical College, Bijapur on or after June, 2005)

(c) against "Delhi University", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—

2	3
Doctor of Medicine (Forensic Medicine)	M.D. (Forensic) Medicine (This shall be a recognized medical qualification when granted by University College of Medical Sciences, Delhi on or after June, 1987)
Master of Surgery (Orthopedics)	M.S. (Orthopedics) (This shall be a recognized medical qualification when granted by Dr. Ram Manohar Lohia Hospital, New Delhi on or after 1986)
Diploma in Child Health	D.C.H. (This shall be a recognized medical qualification when granted by Dr. Ram Manohar Lohia Hospital, New Delhi on or after 1968)

2	3
Diploma in Ophthalmology	D.O. (This shall be a recognized medical qualification when granted by Dr. Ram Manohar Lohia Hospital, New Delhi on or after April, 2005)
Master of Surgery (General Surgery)	M.S. (General Surgery) (This shall be a recognized medical qualification when granted by Dr. Ram Manohar Lohia Hospital, New Delhi on or after 1969)
Doctor of Medicine (General Medicine)	M.D. (General Medicine) (This shall be a recognized medical qualification when granted by Dr. Ram Manohar Lohia Hospital, New Delhi on or after 1966)
Doctor of Medicine (Radio-Diagnosis)	M.D. (Radio-Diagnosis) (This shall be a recognized medical qualification when granted by Dr. Ram Manohar Lohia Hospital, New Delhi on or after 1971)
Diploma in Venereology & Dermatology	D.V.D. (This shall be a recognized medical qualification when granted by Dr. Ram Manohar Lohia Hospital, New Delhi on or after 1969)
Diploma in Dermatology, Venereology & Leprosy	D.D.V.L. (This shall be a recognized medical qualification when granted by Dr. Ram Manohar Lohia Hospital, New Delhi on or after 1969)
Doctor of Medicine (Anaesthesia)	M.D. (Anaesthesia) (This shall be a recognized medical qualification when granted by Dr. Ram Manohar Lohia Hospital, New Delhi on or after 1968)
Master of Surgery (General Surgery)	M.S. (General Surgery) (This shall be a recognized medical qualification when granted by Army Hospital, Delhi Cantt., Delhi on or after 1966)
Diploma in Laryngology and Otology	D.L.O. (This shall be a recognized medical qualification when granted by Army Hospital, Delhi Cantt., Delhi on or after 1983)
Master of Surgery (Orthopedics)	M.S. (Orthopedics) (This shall be a recognized medical qualification when granted by Lady Hardinge Medical College, New Delhi on or after 1977)
Doctor of Medicine (Anaesthesia)	M.D. (Anaesthesia) (This shall be a recognized medical qualification when granted by Safdarjung Hospital, New Delhi on or after 1961)
Diploma in Anaesthesia	D.A. (This shall be a recognized medical qualification when granted by Safdarjung Hospital, New Delhi on or after 1961)
Diploma in Laryngology and Otology	D.L.O. (This shall be a recognized medical qualification when granted by Safdarjung Hospital, New Delhi on or after 1965)
Diploma in Child Health	D.C.H. (This shall be a recognized medical qualification when granted by Safdarjung Hospital, New Delhi on or after 1962)
Diploma in Venereology & Dermatology	D.V.D. (This shall be a recognized medical qualification when granted by Safdarjung Hospital, New Delhi on or after 1968)
Diploma in Dermatology, Venereology & Leprosy	D.D.V.L. (This shall be a recognized medical qualification when granted by Safdarjung Hospital, New Delhi on or after 1968)
Diploma in Anaesthesia	D.A. (This shall be a recognized medical qualification when granted by Hindu Rao Hospital, Delhi on or after 1968)

(d) against "Nagpur University", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—

Diploma in Obst. & Gynae.	D.G.O. (This shall be a recognized medical qualification when granted by J.L.N. Medical College, Swangi, Wardha on or after April, 2005)
Doctor of Medicine (General Medicine)	M.D. (This shall be a recognized medical qualification when granted by J.L.N. Medical College, Swangi, Wardha on or after November, 2003)

(e) against "Punjab University", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—

Master of Surgery (Ophthalmology)	M.S. (Ophthalmology) (This shall be a recognized medical qualification when granted by Christian Medical College, Ludhiana on or after December, 1985 to December 1999)
Doctor of Medicine (Physiology)	M.D. (Physiology) (This shall be a recognized medical qualification when granted by Christian Medical College, Ludhiana on or after 1996)
Doctor of Medicine (Physiology)	M.D. (Physiology) (This shall be a recognized medical qualification when granted by Dayanand Medical College, Ludhiana on or after 1984 to 1999)

(f) against "Baba Farid University of Health Sciences, Faridkot", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—

Master of Surgery (Ophthalmology)	M.S. (Ophthalmology) (This shall be a recognized medical qualification when granted by Christian Medical College, Ludhiana on or after January, 2000)
Doctor of Medicine (Physiology)	M.D. (Physiology) (This shall be a recognized medical qualification when granted by Dayanand Medical College, Ludhiana on or after 2000)

(g) against "Guwahati University & Assam University", under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—

Master of Surgery (Otorhinolaryngology)	M.S. (E.N.T.) (This shall be a recognized medical qualification when granted by Silchar Medical College, Silchar on or after 1988)
Master of Surgery (General Surgery)	M.S. (General Surgery) (This shall be a recognized medical qualification when granted by Silchar Medical College, Silchar on or after 1988)
Master of Surgery (Ophthalmology)	M.S. (Ophthalmology) (This shall be a recognized medical qualification when granted by Silchar Medical College, Silchar on or after 1988)
Diploma in Ophthalmology	D.O. (This shall be a recognized medical qualification when granted by Silchar Medical College, Silchar on or after 1988)

(h) against “Rajasthan University”, under the heading ‘Recognized Medical Qualification’ [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)], the following shall be inserted, namely :—

Doctor of Medicine (Physiology)	M.D. (Physiology) (This shall be a recognized medical qualification when granted by Dr. S. N. Medical College, Jodhpur on or after 1977)
Diploma in Child Health	D.C.H. (This shall be a recognized medical qualification when granted by S.M.S. Medical College, Jaipur on or after 1987)
Master of Surgery (Orthopedics)	M.S. (Orthopedics) (This shall be a recognized medical qualification when granted by J.L.N. Medical College, Ajmer on or after April 1983)

(i) against “Calcutta University”, under the heading ‘Recognized Medical Qualification’ [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)], the following shall be inserted, namely :—

Doctor of Medicine (Tuberculosis and Respiratory Diseases)	M.D. (TB & Respiratory Diseases) (This shall be a recognized medical qualification when granted by N.R.S. Medical College, Kolkata on or after 1975)
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(j) against “Surashtra University”, under the heading ‘Recognized Medical Qualification’ [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)], the following shall be inserted, namely :—

Doctor of Medicine (General Medicine)	M.D. (General Medicine) (This shall be a recognized medical qualification when granted by Pt. Deen Dayal Upadhyay Medical College, Rajkot on or after December, 2004)
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(k) against “Gujarat University”, under the heading ‘Recognized Medical Qualification’ [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)], the following shall be inserted, namely :—

Doctor of Medicine (Anaesthesia)	M.D. (Anaesthesia) (This shall be a recognized medical qualification when granted by Smt. N.H.L. Municipal Medical College, Ahmedabad on or after 1967)
Diploma in Anaesthesia	D.A. (This shall be a recognized medical qualification when granted by Smt. N.H.L. Municipal Medical College, Ahmedabad on or after 1966)
Doctor of Medicine (Physiology)	M.D. (Physiology) (This shall be a recognized medical qualification when granted by Smt. N.H.L. Municipal Medical College, Ahmedabad on or after 1973)

(l) against “Dr. Baba Saheb Ambedkar Marathwada University”, under the heading ‘Recognized Medical Qualification’ [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)], the following shall be inserted, namely :—

Doctor of Medicine (Obstetrics & Gynaecology)	M.D. (Obst. & Gynae) (This shall be a recognized medical qualification when granted by M.G.M. Medical College, Aurangabad on or after August, 2005)
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[No. U. 12012/6/2006-ME(P-II)]

S. K. MISHRA, Under Secy.

नई दिल्ली, 12 जुलाई, 2007

का. आ. 2442.—भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार भारतीय आयुर्विज्ञान परिषद् से परामर्श करने के बाद एतद्द्वारा उक्त अधिनियम की प्रथम अनुसूची में निम्नलिखित और संशोधन करती है, अर्थात् :

उक्त अनुसूची में—

(क) “दिल्ली विश्वविद्यालय” के सामने ‘मान्यता प्राप्त आयुर्विज्ञान अर्हता’ [इसके बाद स्तंभ (2) के रूप में संदर्भित] शीर्ष के अन्तर्गत अन्तिम प्रविष्टि और ‘पंजीकरण के लिए संक्षेपण’ [इसके बाद स्तंभ (3) के रूप में संदर्भित] शीर्ष के अन्तर्गत उससे संबद्ध प्रविष्टि के बाद, निम्नलिखित रखा जाएगा, अर्थात् :—

2	3
डाक्टर ऑफ मेडिसिन (प्रसूति एवं स्त्री रोग विज्ञान)	एम. डी. (ओ.बी.जी.) (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सफदरजंग अस्पताल, नई दिल्ली में प्रशिक्षित छात्रों के संबंध में दिल्ली विश्वविद्यालय द्वारा प्रदान की गई हो)
प्रसूति एवं स्त्री रोग विज्ञान में डिप्लोमा	डी.जी.ओ. (यह एक मान्यता प्राप्त आयुर्विज्ञान अर्हता होगी यदि यह सफदरजंग अस्पताल, नई दिल्ली में प्रशिक्षित छात्रों के संबंध में दिल्ली विश्वविद्यालय द्वारा प्रदान की गई हो)

[सं. यू. 12012/14/2007-एम ई (पी-II) पार्ट]

एस. के. मिश्रा, अवर सचिव

New Delhi, the 12th July, 2007

S.O. 2442.—In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said Schedule—

(a) against “Delhi University” under the heading ‘Recognized Medical Qualification’ [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)], the following shall be inserted, namely :—

2	3
Doctor of Medicine (Obst. & Gynae.)	M.D. (O.B.G.) (This shall be a recognized medical qualification when granted by Delhi University in respect of students trained at Safdarjung Hospital, New Delhi)
Diploma in Obst. & Gynae.	D.G.O. (This shall be a recognized medical qualification when granted by Delhi University in respect of students trained at Safdarjung Hospital, New Delhi)

[No. U. 12012/14/2007-ME(P-II)Pt.]

S. K. MISHRA, Under Secy.

(स्वास्थ्य और परिवार कल्याण विभाग)

(दन्त चिकित्सा शिक्षा अनुभाग)

नई दिल्ली, 2 अगस्त, 2007

का. आ. 2443.—केन्द्रीय सरकार दन्त चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय दन्त चिकित्सा परिषद् से परामर्श करके उक्त अधिनियम की अनुसूची के भाग-I में एतद्द्वारा निम्नलिखित संशोधन करती है; अर्थात् :

2. अनुसूची के भाग-I में क्रम सं. 69 तथा उससे संबंधित प्रविष्टियों के बाद निम्नलिखित क्रम संख्या और प्रविष्टियां रखी जाएंगी :-		
“70 वी एम आर आफ (सम विश्वविद्यालय) सलेम, तमिलनाडु	विनायक मिशन शंकराचार्य डेंटल कालेज, सलेम (i) दन्त शल्य चिकित्सा में स्नातक (यदि 9-11-2005 को अथवा उसके बाद प्रदान की गई हो)	बी डी एस, वी एम आर एफ (सम विश्वविद्यालय) सलेम, तमिलनाडु”

[फा. सं. वी. 12018/5/2007-डी ई]

राज सिंह, अवर सचिव

## (Department of Health and Family Welfare)

## (Dental Education Section)

New Delhi, the 2nd August, 2007

**S.O. 2443.**—In exercise of the powers conferred by sub-section (2) of the Section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with Dental Council of India, hereby, makes the following amendments in Part-I of the Schedule to the said Act, namely :—

2. In Part-I of the Schedule, after serial No. 69, and the entries relating thereto, the following serial number and entries shall be inserted, namely :—

“70. VMRF (Deemed University)  
Salem, Tamil Nadu

**Vinayaka Mission's Sankaracharya  
Dental College, Salem**

(i) Bachelor of Dental Surgery  
(When granted on or after 9-11-2005)

BDS, VMRF  
(Deemed University)  
Salem, Tamil Nadu”

[F. No. V-12018/5/2007-DE]

RAJ SINGH, Under Secy.

## सूचना और प्रसारण मंत्रालय

नई दिल्ली, 6 अगस्त, 2007

**का. आ. 2444.**—चलचित्र (प्रमाणन) नियमावली, 1983 के नियम 7 और 8 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्र सरकार तत्काल प्रभाव से दो वर्षों की अवधि के लिए या अगले आदेशों तक, जो भी पहले हो, केन्द्रीय फिल्म प्रमाणन बोर्ड, मुम्बई के सलाहकार पैनल का गठन करती है उक्त पैनल में निम्नलिखित व्यक्तियों को सदस्य के रूप में नियुक्त करती है।

1. श्री अफजल हुसैन सिद्दिकी

2. श्री लक्ष्मीकांत सतेलकर

3. श्री राकेश के. उपाध्याय

4. श्रीमती रेनू जैन

5. श्री देवेन्द्र मकवाना

6. श्रीमती कंचन काशीनाथ घानेकर

7. श्री प्रदीप पाटिल

8. श्रीमती मिठाईवाला सराह हसनअली

9. श्री नन्दु सादु बंसोडे

10. श्रीमती अंजलि पठारे

11. श्री आर. के. देशमुख

12. सुश्री तीजे सिधु

13. श्रीमती एल. मेमा

14. डा. (श्रीमती) प्रतिभा डी. सिंह

15. श्री भारत नायर

16. श्री सूरज रमेश परमार

17. श्रीमती राधिका बोरागांवकर

18. श्री संजय दादलिका

19. श्री अशोक सिंह

20. श्रीमती सेवा राघवेन्द्र चौहान

21. श्रीमती शालिनी चवन

- |                                     |                                       |
|-------------------------------------|---------------------------------------|
| 22. डॉ. (श्रीमती) आशा आर. परांजपे   | 55. श्रीमती मधु जैन                   |
| 23. श्रीमती कलारा लेविस             | 56. श्रीमती भावना शर्मा               |
| 24. श्री विटठल उमेप                 | 57. श्री गजानन शंकर तावडे             |
| 25. श्री सुशील दलवी                 | 58. श्री मिलिन्द बलीराम नईबागकर       |
| 26. श्री रौफ अहमद                   | 59. श्री एम. वसीम खान                 |
| 27. श्री मोहन स्वरूप माहेश्वरी      | 60. श्री सुरेन्द्रकुमार वाई. त्रिपाठी |
| 28. श्री रिजवान अहमद खान            | 61. श्रीमती हेमलता दीपक               |
| 29. श्रीमती गौरी बापट               | 62. डॉ. (श्रीमती) सुमन जैन            |
| 30. प्रो. (श्रीमती) नन्दिनी सरदेसाई | 63. श्रीमती विद्या हेगडे              |
| 31. श्री अशोक सक्सेना               | 64. श्रीमती पी. जाधव                  |
| 32. श्री कैलाश मुरारका              | 65. श्रीमती शिरीन आनंदिता             |
| 33. श्री नितिन पी. मवानी            | 66. श्रीमती हेमा शुक्ला               |
| 34. श्री विनय कुमार सिन्हा          | 67. श्रीमती अर्चना गोरे               |
| 35. श्री रामदास फुटाने              | 68. श्री सुनील शिन्दे                 |
| 36. डॉ. (श्री) के. भौर              | 69. श्रीमती वन्दना राजीव भाटिया       |
| 37. श्री मीरसाहेब शियोब अली         | 70. श्रीमती पल्लवी आचार्य             |
| 38. श्रीमती देवयानी खानकोजे         | 71. श्रीमती जाह्नवी आचार्य शर्मा      |
| 39. श्री नदीम नुसरत                 | 72. श्रीमती संगीता कसट                |
| 40. श्रीमती विद्या कदम              | 73. श्रीमती मयंक शेखर                 |
| 41. डॉ. (श्रीमती) एम. पाटिल         | 74. श्रीमती तनुजा परदेशी              |
| 42. श्रीमती एन. चीमा                | 75. श्रीमती प्रतिमा ललित दोषी         |
| 43. श्री. एस. सोढी                  | 76. श्रीमती नूतन सागर                 |
| 44. श्री राजाराम तनावडे             | 77. श्री मौहम्मद अहमद                 |
| 45. श्री. डी. गोपाले                | 78. श्री प्रकाश राऊत                  |
| 46. श्री. एस. गायकवाड               | 79. श्री राजन दत्तात्रेय पारकर        |
| 47. श्रीमती एस. सनाप                |                                       |
| 48. डॉ. (श्रीमती) मानसी मांगीकर     |                                       |
| 49. श्री मनोज दूबे                  |                                       |
| 50. श्री शंकर गंगाधर सोनावाने       |                                       |
| 51. श्रीमती रानी कैलाश पोद्दार      |                                       |
| 52. श्रीमती एम. कनाडे               |                                       |
| 53. श्रीमती अल्का पान्डेय           |                                       |
| 54. श्री कपिल चन्द्रकांत गोरपाडे    |                                       |

[फा. सं. 809/4/2007-एफ (सी)]

संगीता सिंह, निदेशक (फिल्म)

# MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 6th August, 2007

**S.O. 2444.**—In exercise of the powers conferred by sub-section (1) of Section 5 of Cinematograph Act, 1952 (37 of 1952) read with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to constitute the Mumbai advisory panel of the Central Board of Film Certification and to appoint the

following persons as members of the said panel with immediate effect for a period of two years or until further orders, whichever is earlier. This supersedes this Ministry's Notification No. 809/1/2004-F(C) dated 20-06-2005.

1. Shri Afzal Hussein Siddhiqui
2. Shri Lakshmikanth Satelkar
3. Shri Rakesh K. Upadhyay
4. Smt. Renu Jain
5. Shri Devendra Makwana
6. Smt. Kanchan Kashinath Ghanekar
7. Shri Pradeep Patil
8. Smt. Mithaiwala Sarah Hasanali
9. Shri Nandu Sadu Bansode
10. Smt. Anjali Pathare
11. Shri R.K. Deshmukh
12. Ms. Teejay Sidhu
13. Smt. L. Mema
14. Dr. (Smt.) Pratibha D. Singh
15. Shri Bharat Nair
16. Shri Suraj Ramesh Parmar
17. Smt. Radhika Boragaonkar
18. Shri Sanjay Dadlika
19. Shri Ashok Singh
20. Smt. Seva Raghavendra Chouhan
21. Smt. Shalini Chavan
22. Dr. (Smt.) Asha R. Paranjape
23. Smt. Clara Lewis
24. Shri Vitthal Umap
25. Shri Sushil Dalvi
26. Shri Rauf Ahmed
27. Shri Mohan Swaroop Maheswari
28. Shri Rizwan Ahmed Khan
29. Smt. Gauri Bapat
30. Prof. (Smt.) Nandini Sardesai
31. Shri Ashok Saxena
32. Shri Kailash Murarka
33. Shri Nitin P. Mavani
34. Shri Vinay Kumar Sinha
35. Shri Ramdas Phutane
36. Dr. (Shri) K. Bhoir
37. Shri Mirsaheb Sheob Ali
38. Smt. Devyani Khankojie
39. Shri Nadeem Nusrath

40. Smt. Vidya Kadam
41. Dr. (Smt.) M. Patil
42. Smt. N. Cheema
43. Shri S. Sodhi
44. Shri Rajaram Tanawde
45. Shri. D. Gopale
46. Shri. S. Gaikwad
47. Smt. S. Sanap
48. Dr. (Smt.) Mansi Mangikar
49. Shri Manoj Dubey
50. Shri Shankar Gangadhar Sonawane
51. Smt. Rani Kailash Poddar
52. Smt. M. Kanade
53. Smt. Alka Pandey
54. Shri Kapil Chandrakant Gorpade
55. Smt. Madhu Jain
56. Smt. Bhavana Sharma
57. Shri Gajanan Shankar Tawde
58. Shri Milind Baliram Naibagkar
59. Shri M. Waseem Khan
60. Shri Surender Kumar Y. Tripathi
61. Smt. Hemlata Deepak
62. Dr. (Smt.) Suman Jain
63. Smt. Vidya Hegde
64. Smt. P. Jadhav
65. Smt. Shrin Anandita
66. Smt. Hema Shukla
67. Smt. Archana Gore
68. Shri Sunil Shinde
69. Smt. Vandana Rajeev Bhatia
70. Smt. Pallavi Acharya
71. Smt. Jahnvi Acharya Sharma
72. Smt. Sangita Kasat
73. Smt. Mayank Shekhar
74. Smt. Tanuja Pardesi
75. Smt. Pratima Lalit Doshi
76. Smt. Nutan Sagar
77. Shri Mohammad Ahmed
78. Shri Prakash Raut
79. Shri Rajan Dattatray Parkar

[F. No. 809/4/2007 F(C)]

SANGEETA SINGH, Director (Films)

नई दिल्ली, 2 अगस्त, 2007

का. आ. 2445—इस मंत्रालय की दिनांक, 2 जनवरी, 2007 की समसंख्यक अधिसूचना के अनुक्रम में और चलचित्र (प्रमाणन) नियमावली, 1983 के नियम 7 और 8 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्र सरकार तत्काल प्रभाव से दो वर्षों की अवधि के लिए या अगले आदेशों तक, जो भी पहले हो, केंद्रीय फिल्म प्रमाणन बोर्ड के गुवाहाटी सलाहकार पैनल के सदस्य के रूप में श्री कलीपाड़ा डे, डाकखाना तितागुड़ी, जिला कोकराझार, बी टी सी असम, को नियुक्ति करती है।

[फा. सं. 809/3/2006-एफ (सी)]

संगीता सिंह, निदेशक (फिल्म)

New Delhi, the 2nd August, 2007

S.O. 2445.—In continuation of this Ministry's Notification of even number dated 2nd January, 2007 and in exercise of the powers conferred by sub-section (1) of Section 5 of the Cinematograph Act, 1952 (37 of 1952) read with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983 the Central Government is pleased to appoint Shri Kalipada Dey, P.O. Titaguri, Distt. Kokrajhar, B.T.C. Assam as a member of the Guwahati advisory panel of the Central Board of Film Certification with immediate effect for a period of two years or until further orders, whichever is earlier.

[F.No. 809/3/2006-F(C)]

SANGEETA SINGH, Director (Films)

नई दिल्ली, 2 अगस्त, 2007

का. आ. 2446.—इस मंत्रालय की दिनांक, 31 मई, 2007 की समसंख्यक अधिसूचना के अनुक्रम में और चलचित्र (प्रमाणन) नियमावली, 1983 के नियम 7 और 8 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केंद्र सरकार तत्काल प्रभाव से दो वर्षों की अवधि के लिए या अगले आदेशों तक, जो भी पहले हो, केंद्रीय फिल्म प्रमाणन बोर्ड के हैदराबाद सलाहकार पैनल के सदस्य के रूप में श्री आथम दशरथ रामी रेड्डी, मकान सं. 2-1-407, फ्लैट सं. 108, शांति भवन, तिलक नगर रेलवे पुल के निकट, नल्लाकुंटा, हैदराबाद-500044 को नियुक्ति करती है।

[फा. सं. 809/1/2007-एफ (सी)]

संगीता सिंह, निदेशक (फिल्म)

New Delhi, the 2nd August, 2007

S.O. 2446.—In continuation of this Ministry's Notification of even number dated 31st May, 2007 and in exercise of the powers conferred by sub-section (1) of Section 5 of the Cinematograph Act, 1952 (37 of 1952) read

with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983 the Central Government is pleased to appoint Shri Atham Dashratha Rami Reddy, House No. 2-1-407, Flat No. 108, Shanti Bhavan, Near Tilak Nagar Railway Bridge, Nallakunta, Hyderabad-500044 as a member of the Hyderabad advisory panel of the Central Board of Film Certification with immediate effect for a period of two years or until further orders, whichever is earlier.

[F.No. 809/1/2007-F(C)]

SANGEETA SINGH, Director (Films)

## संचार और सूचना प्रौद्योगिकी मंत्रालय

(दूरसंचार विभाग)

(राजभाषा अनुभाग)

नई दिल्ली, 20 अगस्त, 2007

का. आ. 2447.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 (यथा संशोधित 1987) के नियम 10(4) के अनुसरण में संचार और सूचना प्रौद्योगिकी मंत्रालय, दूरसंचार विभाग के प्रशासनिक नियंत्रणाधीन निम्नलिखित कार्यालयों को, जिसमें 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्वारा अधिसूचित करती है।

महाप्रबंधक दूरसंचार जिला, भारत संचार निगम लिमिटेड,  
कारवार

1. मंडल अभियंता (अनुरक्षण) भटकल
2. मंडल अभियंता (अनुरक्षण) दांडेली

[सं. ई. 11016/1/2007-(रा.भा.)]

बलराम शर्मा, संयुक्त सचिव (प्रशासन)

MINISTRY OF COMMUNICATIONS AND  
INFORMATION TECHNOLOGY

(Department of Telecommunications)

(O.L. Section)

New Delhi, the 20th August, 2007

S.O. 2447.—In pursuance of rule 10(4) of the Official Language (Use for official purposes of the Union), rules, 1976 (as amended—1987), the Central Government hereby notifies the following Offices under the administrative control of the Ministry of Communications and Information Technology, Department of Telecommunications where more than 80% of staff have acquired working knowledge of Hindi.

General Manager Telecom. District, Bharat Sanchar  
Nigam Ltd., Karwar

1. Divisional Engineer, (Maintenance), Bhatkal
2. Divisional Engineer, (Maintenance), Dandeli

[No. E. 11016/1/2007-(O.L.)]

BALRAM SHARMA, Jt. Secy. (Administration)

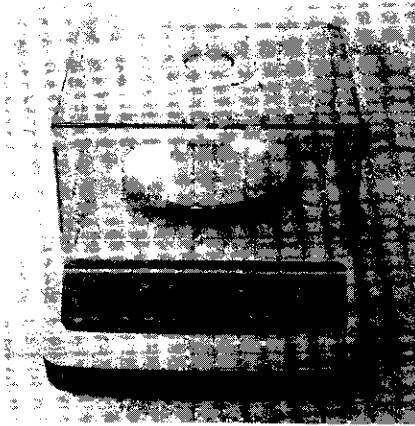
## उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

( उपभोक्ता मामले विभाग )

नई दिल्ली, 9 अगस्त, 2007

**का.आ. 2448.**—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (7) और (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स लिओटोनिक स्केल्स प्रा. लि. 47, हाइड मार्केट, अमृतसर, पंजाब द्वारा विनिर्मित उच्च यथार्थता (यथार्थता वर्ग-11) वाले “जे डब्ल्यू-600 एल” शृंखला के अंकक सूचन सहित, अस्वचालित तोलन उपकरण (टेबल टाप प्रकार) के मॉडल का, जिसके ब्रांड का नाम “लिओ” है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी/09/07/139 समनुदेशित किया गया है, अनुमोदन प्रमाणपत्र जारी और प्रकाशित करती है।



उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित (टेबल टाप प्रकार का) तोलन उपकरण है। इसकी अधिकतम क्षमता 300 ग्रा. है और न्यूनतम क्षमता 0.2 ग्रा. है। सत्यापन मापमान अंतराल (ई) 0.01 ग्रा. है। इसमें एक आद्येतुलन युक्ति है जिसका शत प्रतिशत व्यकलनात्मक धारित आद्येतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एल ई डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।

स्टैम्पिंग प्लेट के मुद्रांकन के अतिरिक्त मशीन को कपटपूर्ण व्यवहारों के लिए खोलने से रोकने के लिए सीलबंद भी किया जाएगा और मॉडल को बिक्री से पहले या बाद में उसकी सामग्री, यथार्थता, डिजाइन, सर्किट डायग्राम निष्पादन सिद्धांत आदि की शर्तों पर परिवर्तित नहीं किया जाएगा।

और, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से, जिससे अनुमोदित मॉडल का निर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 1 मि.ग्रा. से 50 मि.ग्रा. तक के “ई” मान के लिए 100 से 50,000 तक के रेंज में सत्यापन मापमान अंतराल (एन) और 100 मि.ग्रा. या उससे अधिक के “ई” मान के लिए 5,000 से 50,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और “ई” मान  $1 \times 10^*$ ,  $2 \times 10^*$  या  $5 \times 10^*$ , के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(60)/2007]

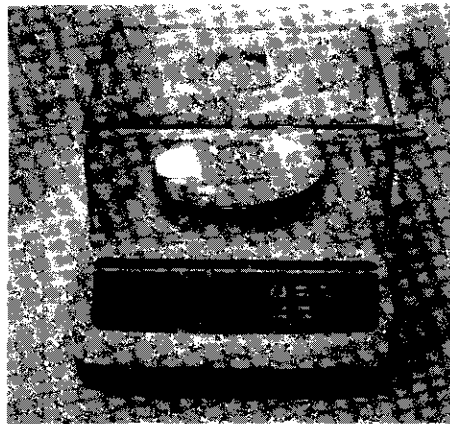
आर. माधुरबूधम, निदेशक, विधिक माप विज्ञान

**MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION****(Department of Consumer Affairs)**

New Delhi, the 9th August, 2007

**S.O. 2448.**—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the Model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said Model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the Model of non-automatic weighing instrument (Tabletop type) with digital indication of “JW-600L” series of high accuracy (Accuracy class II) and with brand name “LEO” (herein referred to as the said Model), manufactured by M/s. Leotronic Scales Pvt. Ltd., 47, Hide Market, Amritsar, Punjab and which is assigned the approval mark IND/09/07/139 ;



The said Model is a strain gauge type load cell based non-automatic weighing instrument (Tabletop type) with a maximum capacity of 300g and minimum capacity of 0.2g. The verification scale interval (e) is 0.01g. It has a tare device with a 100 per cent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing result. The instrument operates on 230 Volts and 50 Hertz alternative current power supply.

In addition to sealing the stamping plate sealing shall also be done to prevent opening of the machine for fraudulent practices and Model shall not be changed in terms of its material, accuracy, design, circuit diagram, working principle etc. before or after sale.

Further, in exercise of the powers conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said Model shall also cover the weighing instrument of similar make and performance of same series with maximum capacity up to 50kg and with number of verification scale interval (n) in the range of 100 to 50,000 for ‘e’ value of 1mg to 50mg and with number of verification scale interval (n) in the range of 5,000 to 50,000 for ‘e’ value of 100 mg or more and with ‘e’ value  $1 \times 10^k$ ,  $2 \times 10^k$  or  $5 \times 10^k$ , k being the positive or negative whole number or equal to zero, manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved Model has been manufactured.

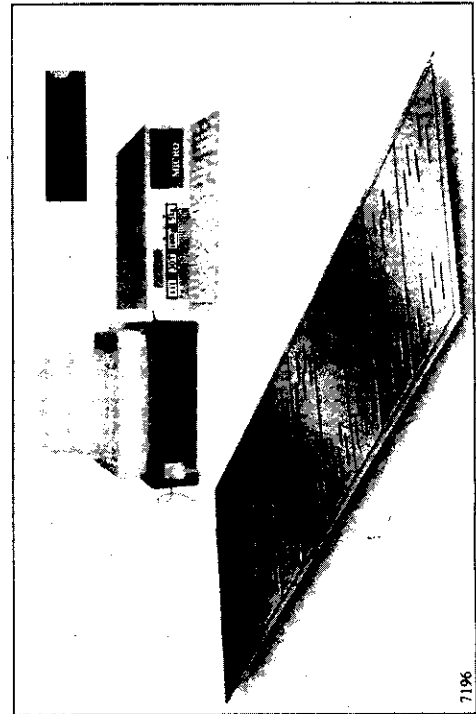
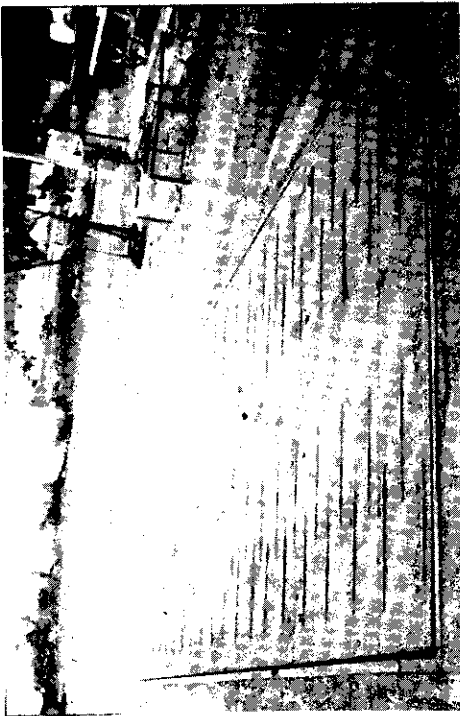
[F. No. WM-21(60)/2007]

R. MATHURBOOTHAM, Director of Legal Metrology

नई दिल्ली, 9 अगस्त, 2007

का.आ. 2449.—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट तथा माप मानक अधिनियम, 1976 (1976 का 60) और बाट तथा माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) और उपधारा (8) द्वारा शक्तियों का प्रयोग करते हुए मैसर्स माइक्रो सेंसर, 38, धरमतला रोड, बैली, मंडल मिनी मार्केट, हावड़ा, पश्चिम बंगाल द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग III) वाले “एमसीडब्ल्यू” शृंखला के अंकक सूचन सहित, अस्वचालित तोलन उपकरण (वेब्रिज प्रकार) के मॉडल का, जिसके ब्राण्ड का नाम “माइक्रो” है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी/09/07/314 समनुदेशित किया गया है, अनुमोदन प्रमाणपत्र जारी करती है।



7196

उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित अस्वचालित (वेब्रिज प्रकार) तोलन उपकरण है। इसकी अधिकतम क्षमता 30 टन और न्यूनतम क्षमता 100 कि.ग्रा. है। सत्यापन मापमान अन्तराल (ई) 5 कि.ग्रा. है। इसमें एक आद्येतुलन युक्ति है जिसका शत प्रतिशत व्यकलनात्मक धारित आधेतुलन प्रभाव है। प्रकाश उत्सर्जक डायोड (एल ई डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।

स्टाम्पिंग प्लेट के मुद्रांकन के अतिरिक्त मशीन को कपटपूर्ण व्यवहारों के लिए खोलने से रोकने के लिए सीलबंद भी किया जाएगा और मॉडल को बिक्री से पहले या बाद में उसकी सामग्री, यथार्थता, डिजाइन, सर्किट डायग्राम निष्पादन सिद्धांत आदि की शर्तों पर परिवर्तित नहीं किया जाएगा।

और, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से, जिससे उक्त अनुमोदित मॉडल का निर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 5 ग्रा. या उससे अधिक के “ई” मान के लिए 500 से 10,000 तक के रेंज में सत्यापन मापमान अंतराल (एन) सहित 5 टन से अधिक और 100 टन की अधिकतम क्षमता वाले हैं और “ई” मान  $1 \times 10^3$ ,  $2 \times 10^3$  या  $5 \times 10^3$ , के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

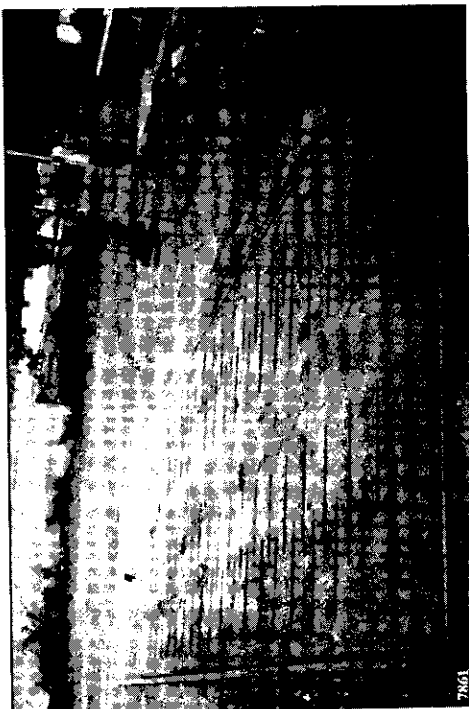
[फा. सं. डब्ल्यू एम-21(64)/2006]

आर. माथुरबूधम, निदेशक, विधिक माप विज्ञान

New Delhi, the 9th August, 2007

**S.O. 2449.**—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the Model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said Model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the Model of non-automatic weighing instrument (weighbridge type) with digital indication of "MCW" series belonging to medium (Accuracy class III) and with brand name "MICRO" (hereinafter referred to as the said Model), manufactured by M/s. Micro Sensor, 38, Dharmatala Road, Bally, Mandal Mini Market, Howrah, West Bengal and which is assigned the approval mark IND/09/07/314 ;



The said Model is a strain gauge type load cell based non-automatic weighing instrument (weighbridge type) with a maximum capacity of 30 tonne and minimum capacity of 100 kg. The verification scale interval (e) is 5 kg. It has a tare device with a 100 per cent subtractive retained tare effect. The Light Emitting Diode (LED) display indicates the weighing result. The instrument operates on 230 Volts and 50 Hertz alternative current power supply.

In addition to sealing the stamping plate sealing shall also be done to prevent opening of the machine for fraudulent practices and Model shall not be changed in terms of its material, accuracy, design, circuit diagram, working principle etc. before or after sale.

Further, in exercise of the powers conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said Model shall also cover the weighing instrument of similar make, accuracy and performance of same series with maximum capacity above 5 tonne and up to 100 tonne with verification scale interval (n) in the range of 5,00 to 10,000 for 'e' value of 5g or more and with 'e' value  $1 \times 10^k$ ,  $2 \times 10^k$  or  $5 \times 10^k$ , k being the positive or negative whole number or equal to zero, manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved Model has been manufactured.

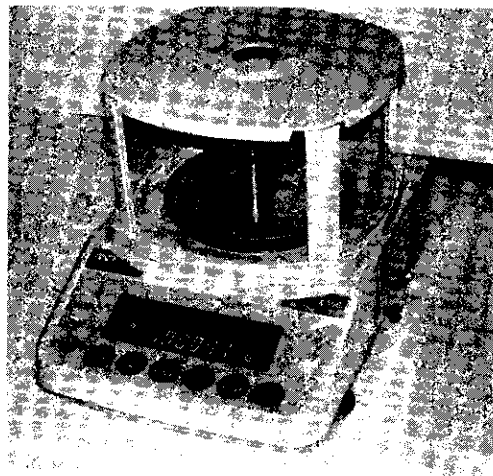
[F. No. WM-21(64)/2007]

R. MATHURBOOTHAM, Director of Legal Metrology

नई दिल्ली, 9 अगस्त, 2007

**का.आ. 2450.**—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट तथा माप मानक अधिनियम, 1976 (1976 का 60) और बाट तथा माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उपधारा (7) और उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स एण्ड कम्पनी लि., 3-2-14, हिगाशी-आइकेबुकुरो, ताशीमा-कू, टोक्यो-1700013, जापान द्वारा विनिर्मित और मैसर्स जय इंस्ट्रुमेंट्स एण्ड सिस्टम्स प्रा. लि., ई-16, एवरेस्ट बिल्डिंग, टारदेओ, मुंबई-400034, महाराष्ट्र द्वारा विपणित विशेष यथार्थता (यथार्थता वर्ग I) वाले “एफ एक्स-1” श्रृंखला के अंकक सूचन सहित, अस्वचालित तोलन उपकरण (टेबल टाप प्रकार) के मॉडल का, जिसके ब्राण्ड का नाम “एण्ड” है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी/09/07/256 समनुदेशित किया गया है, अनुमोदन प्रमाणपत्र जारी करती है।



उक्त मॉडल एक इलैक्ट्रोमैग्नेटिक फोर्स प्रिंसिपल आधारित अस्वचालित (टेबल टाप प्रकार) तोलन उपकरण है। इसकी अधिकतम क्षमता 320 ग्रा. है और न्यूनतम क्षमता 100 मि.ग्रा. है। सत्यापन मापमान अन्तराल (ई) 1 मि.ग्रा. है। इसमें एक आद्येतुलन युक्ति है जिसका शत प्रतिशत व्यकलनात्मक धारित आद्येतुलन प्रभाव है। वैक्यूम फ्लोरेंस (वी एफ डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।

स्टाम्पिंग प्लेट के मुद्रांकन के अतिरिक्त मशीन को कपटपूर्ण व्यवहारों के लिए खोलने से रोकने के लिए सीलबंद भी किया जाएगा और मॉडल को बिक्री से पहले या बाद में उसकी सामग्री, यथार्थता, डिजाइन, सर्किट डायग्राम निष्पादन सिद्धांत आदि की शर्तों पर परिवर्तित नहीं किया जाएगा।

और, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से, जिससे उक्त अनुमोदित मॉडल का निर्माण किया गया है, विनिर्मित उसी श्रृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 1 मि.ग्रा. या उससे अधिक के “ई” मान के लिए 50,000 तक के रेंज में सत्यापन मापमान अंतराल (एन) सहित 50 कि. ग्रा. तक अधिकतम क्षमता वाले हैं और “ई” मान  $1 \times 10^*$ ,  $2 \times 10^*$  या  $5 \times 10^*$ , के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

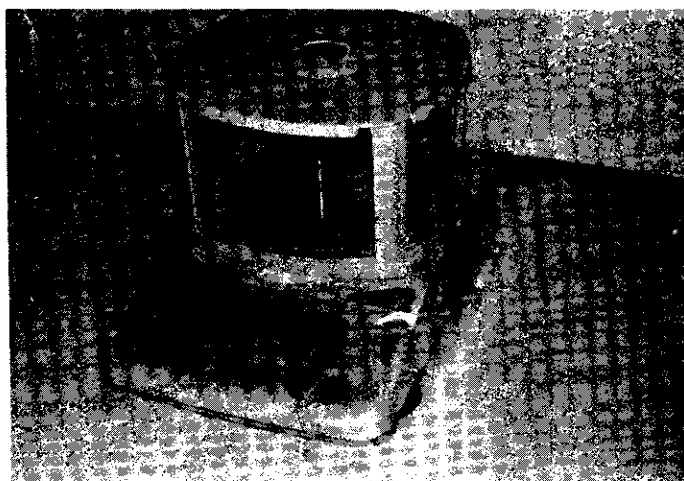
[फा. सं. डब्ल्यू एम-21(36)/2007]

आर. माथुरबूथम, निदेशक, विधिक माप विज्ञान

New Delhi, the 9th August, 2007

**S.O. 2450.**—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the Model of non-automatic weighing instrument (Tabletop type) with digital indication of "FX-i" series of special accuracy (accuracy class-1) and with brand name "AND" (herein referred to as the said Model), manufactured by M/s. AND Company Ltd., 3-2-14, Higashi-Ikebukuro, Toshima-ku, Tokyo-170 0013, Japan and marketed by M/s. Jay Instruments and Systems Pvt. Ltd., E-16, Everest Building, Tardeo, Mumbai-400 034, Maharestra and which is assigned the approval mark IND/09/07/256 ;



The said Model is an electromagnetic force principle based non-automatic weighing instrument (Table top type) with a maximum capacity of 320g and minimum capacity of 100mg. The verification scale interval (e) is 1mg. It has a tare device with a 100 per cent subtractive retained tare effect. The Vacuum florescent (VFD) display indicates the weighing result. The instrument operates on 230 Volts and 50 Hertz alternative current power supply.

In addition to sealing the stamping plate sealing shall also be done to prevent opening of the machine for fraudulent practices and Model shall not be changed in terms of its material, accuracy, design, circuit diagram, working principle etc.

Further, in exercise of the powers conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said Model shall also cover the weighing instruments of similar make, accuracy and performance of same series with maximum capacity upto 50 kg with verification scale interval (n) in the range of 50,000 or more for 'e' value of 1mg or more and with 'e' value  $1 \times 10^k$ ,  $2 \times 10^k$  or  $5 \times 10^k$ , k being the positive or negative whole number or equal to zero, manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved Model has been manufactured.

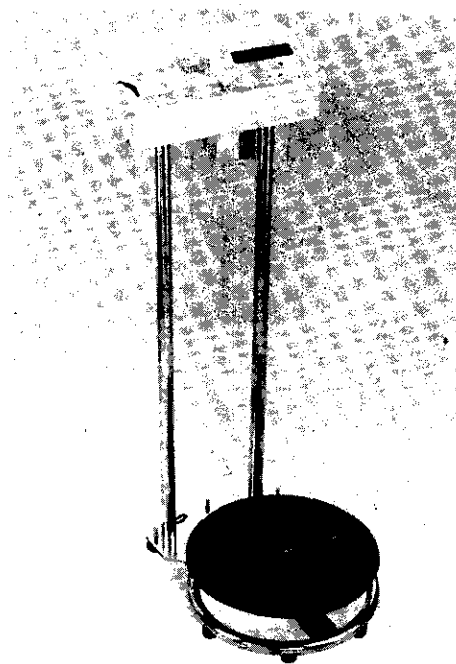
[F. No. WM-21(36)/2007]

R. MATHURBOOTHAM, Director of Legal Metrology

नई दिल्ली, 21 अगस्त, 2007

**का.आ. 2451.**—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (7) और (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स सिक्को इंडिया, हाउस नं. 69, आर के नगर, सै. नं. 2, मोरवाडी, ताल-कारवीर, जिला कोल्हापुर, महाराष्ट्र द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग III) वाले “सिक्को-पी ई आर” शृंखला के अंकक सूचन सहित, अस्वचालित तोलन उपकरण (इलेक्ट्रॉनिक सिक्का प्रचालित-व्यक्ति तोलन मशीन-टिकट मुद्रण सुविधा के साथ या उसके बिना) के मॉडल का, जिसके ब्रांड का नाम “सिक्को इंडिया” है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी/09/07/181 समनुदेशित किया गया है, अनुमोदन प्रमाणपत्र जारी करती है।



उक्त मॉडल एक विकृत गेज प्रकार का भार सेल आधारित तोलन उपकरण है। इसकी अधिकतम क्षमता 150 कि. ग्रा. है और न्यूनतम क्षमता 2 कि. ग्रा. है। सत्यापन मापमान अन्तराल (ई) 100 ग्रा. है। प्रकाश उत्सर्जक डायोड (एल ई डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। उपकरण 230 वोल्ट और 50 हर्ट्ज प्रत्यावर्ती धारा विद्युत प्रदाय पर कार्य करता है।

स्टाम्पिंग प्लेट के मुद्रांकन के अतिरिक्त मशीन को कपटपूर्ण व्यवहारों के लिए खोलने से रोकने के लिए सीलबंद भी किया जाएगा और मॉडल को बिक्री से पहले या बाद में उसकी सामग्री, यथार्थता, डिजाइन, सर्किट डायग्राम निष्पादन सिद्धांत आदि की शर्तों पर परिवर्तित नहीं किया जाएगा।

और, केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उप-धारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल निर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 5 ग्रा. या उससे अधिक के “ई” मान के लिए 500 से 10,000 तक की रेंज में सत्यापन मापमान अंतराल (एन) सहित 100 कि.ग्रा. से अधिक और 200 कि.ग्रा. तक की अधिकतम क्षमता वाले हैं और “ई” मान  $1 \times 10^*$ ,  $2 \times 10^*$ ,  $5 \times 10^*$ , के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

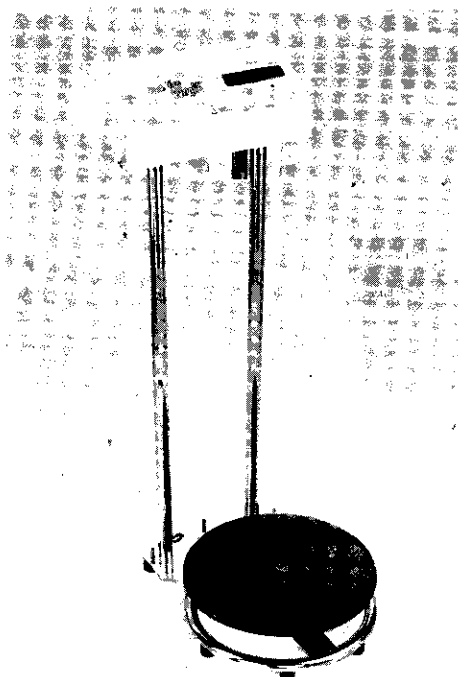
[फा. सं. डब्ल्यू एम-21(188)/2006]

आर. माथुरबूथम, निदेशक, विधिक माप विज्ञान

New Delhi, the 21st August, 2007

**S.O. 2451.**—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) (hereinafter referred to as the said Act) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of Model of non-automatic weighing instrument with digital indication (Electronic coin operated person weighing machine with or without ticket printing facility) of medium accuracy (Accuracy class-III) belonging to "SEICO-PER" series with brand name "SEICO INDIA" (herein referred to as the said Model), manufactured by M/s. Seico India, House No. 69, R. K. Nagar, Sec. No. 2, Morewadi, Tal.-Karveer, Distt. Kolahapur, Maharashtra and which is assigned the approval mark IND/09/07/181 ;



The said Model is a strain gauge type load cell based weighing instrument with the maximum capacity of 150 kg and minimum capacity is 2 kg. The verification scale interval (e) is 100 g. The display is of Light Emitting Diode (LED) type. The instrument operates on 230 Volts and 50 Hertz alternative current power supply.

In addition to sealing the stamping plate sealing shall also be done to prevent opening of the machine for fraudulent practices and Model shall not be changed in terms of its material, accuracy, design, circuit diagram, working principle etc. before or after sale.

Further, in exercise of the powers conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said Model shall also cover the weighing instrument of similar make, accuracy and performance of same series with maximum capacity in the range of 100 kg to 200 kg with verification scale interval (n) in the range of 500 to 10,000 for 'e' value of 5g or more and with 'e' value  $1 \times 10^k$ ,  $2 \times 10^k$  or  $5 \times 10^k$ , k being the positive or negative whole number or equal to zero, manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved Model has been manufactured.

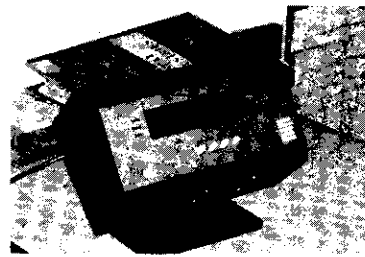
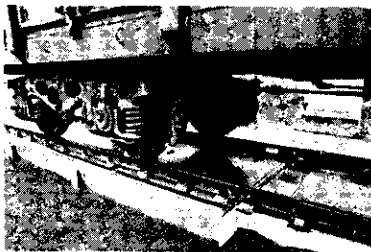
[F. No. WM-21(188)/2006]

R. MATHURBOOTHAM, Director of Legal Metrology

नई दिल्ली, 22 अगस्त, 2007

**का.आ. 2452.**—केन्द्रीय सरकार का, विहित प्राधिकारी द्वारा उसे प्रस्तुत रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि उक्त रिपोर्ट में वर्णित मॉडल (नीचे दी गई आकृति देखें) बाट और माप मानक अधिनियम, 1976 (1976 का 60) तथा बाट और माप मानक (मॉडलों का अनुमोदन) नियम, 1987 के उपबंधों के अनुरूप है और इस बात की संभावना है कि लगातार प्रयोग की अवधि में भी उक्त मॉडल यथार्थता बनाए रखेगा और विभिन्न परिस्थितियों में उपयुक्त सेवा प्रदान करता रहेगा;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 36 की उप-धारा (7) और (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैसर्स सेंसर एंड सिस्टम नं. 3, पंचदीप लेआउट, जय प्रकाश नगर, खामला, नागपुर-440025, महाराष्ट्र द्वारा विनिर्मित मध्यम यथार्थता (यथार्थता वर्ग III) वाले “ई आर एस” शृंखला के अंकक सूचन सहित, अस्वचालित तोलन उपकरण रेल वेब्रिज (स्टैटिक प्रकार) के मॉडल का, जिसके ब्रांड का नाम “ई एल वेह” है (जिसे इसमें इसके पश्चात् उक्त मॉडल कहा गया है) और जिसे अनुमोदन चिह्न आई एन डी/09/06/486 समनुदेशित किया गया है, अनुमोदन प्रमाणपत्र जारी और प्रकाशित करती है। तोलन एकल आधार (4 एक्ससैल/ 2 एक्ससैल तोलन) या द्वि सम आधार (4 एक्ससैल तोलन) द्वारा किया जा सकता है।



उक्त मॉडल मध्यम यथार्थता वर्ग (III) वाले अंकक सूचन सहित स्वचालित रेल वेब्रिज (स्टैटिक प्रकार) भार सेल आधारित है। इसकी अधिकतम क्षमता 120 टन है और न्यूनतम क्षमता 1 टन है। सत्यापन मापमान अंतराल (ई) 50 कि.ग्रा. है। प्रकाश उत्सर्जक डायोड (एल ई डी) प्रदर्श तोलन परिणाम उपदर्शित करता है। स्टॉपिंग प्लेट के मुद्रांकन के अतिरिक्त मशीन को कपटपूर्ण व्यवहारों के लिए खोलने से रोकने के लिए सीलबन्द भी किया जाएगा और मॉडल को विक्री से पहले या बाद में उसकी सामग्री, यथार्थता, डिजाइन, सर्किट डायग्राम निष्पादन सिद्धांत आदि की शर्तों पर परिवर्तित नहीं किया जाएगा।

और, केन्द्रीय सरकार उक्त अधिनियम की धारा 36 की उप-धारा (12) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह घोषणा करती है कि उक्त मॉडल के अनुमोदन के इस प्रमाणपत्र के अंतर्गत उसी विनिर्माता द्वारा उसी सिद्धांत, डिजाइन के अनुसार और उसी सामग्री से जिससे उक्त अनुमोदित मॉडल का निर्माण किया गया है, विनिर्मित उसी शृंखला के वैसे ही मेक, यथार्थता और कार्यपालन के तोलन उपकरण भी होंगे जो 5 ग्रा. या उससे अधिक के “ई” मान के लिए 500 से 10,000 के बीच में तापमान अंतराल ‘एन’ की संख्या सहित 300 टन तक की अधिकतम क्षमता वाले हैं और “ई” मान  $1 \times 10^3$ ,  $2 \times 10^3$ ,  $5 \times 10^3$ , के हैं, जो धनात्मक या ऋणात्मक पूर्णांक या शून्य के समतुल्य हैं।

[फा. सं. डब्ल्यू एम-21(67)/2006]

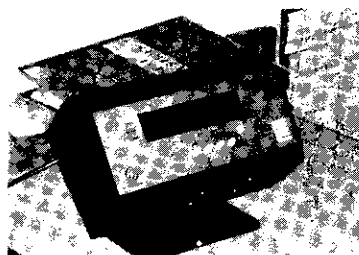
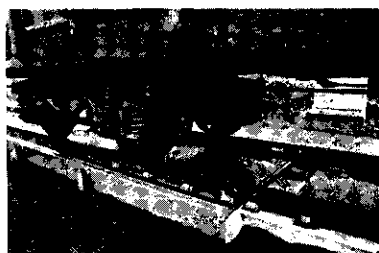
आर. माथुरबूथम, निदेशक, विधिक माप विज्ञान

New Delhi, the 22nd August, 2007

**S.O. 2452.**—Whereas the Central Government, after considering the report submitted to it by the prescribed authority, is satisfied that the model described in the said report (see the figure given below) is in conformity with the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) and the Standards of Weights and Measures (Approval of Models) Rules, 1987 and the said model is likely to maintain its accuracy over periods of sustained use and to render accurate service under varied conditions;

Now, therefore, in exercise of the powers conferred by sub-sections (7) and (8) of Section 36 of the said Act, the Central Government hereby issues and publishes the certificate of approval of the Model of Non-automatic Weighing Instrument (static type Rail Weighbridge) with digital indication belonging to medium accuracy (Accuracy Class-III) of series “ERS” and brand name “EL-WEIGH” (herein referred to as the said model), manufactured by M/s. Sensors and Systems, No. 3, Panchdeep Layout, Jaiprakash Nagar, Khamala, Nagpur-440 025, Maharashtra and which is assigned the approval mark IND/09/06/486;

The model is a load cell based Non Automatic Weighing Instrument (static type Rail Weighbridge) with digital indication belonging to medium accuracy (Accuracy class-III). Its maximum capacity is 120 tonne and minimum capacity is 1 tonne. The verification scale interval is 50 kg. The weighment can be on Single platform (Four axle weighment/Two axle weighment) or Twin platform (Four axle weighment). The light emitting diode (LED) display indicates the weighing result. In addition to sealing the stamping plate, sealing shall also be done to prevent opening of the machine for fraudulent practices and Model shall not be changed in terms of its material, accuracy, design, circuit diagram, working principle etc. before or after sale.



Further, in exercise of the powers conferred by sub-section (12) of Section 36 of the said Act, the Central Government hereby declares that this certificate of approval of the said Model shall also cover the weighing instruments of similar make and performance of same series with maximum capacity up to 300 tonne and with number of verification scale interval (n) in the range of 500 to 10,000 for ‘e’ value of 5g or more and with ‘e’ value of the form  $1 \times 10^k$ ,  $2 \times 10^k$  or  $5 \times 10^k$ , k being the positive or negative whole number or equal to zero, manufactured by the same manufacturer in accordance with the same principle, design and with the same materials with which, the said approved Model has been manufactured.

[F. No. WM-21(67)/2006]

R. MATHURBOOTHAM, Director of Legal Metrology

**भारतीय मानक ब्यूरो**

नई दिल्ली, 21 अगस्त, 2007

का. आ. 2453.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988, के विनियम 5 के उप विनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं को उनके आगे दर्शाई गई तिथि से रद्द कर दिया गया है :

**अनुसूची**

क्रम सं.	लाइसेंस संख्या	लाइसेंसधारी का नाम एवं पता	लाइसेंस के अंतर्गत वस्तु/प्रक्रम संबद्ध भारतीय मानक सहित	रद्द करने की तिथि
1.	7511060	स्टैंडर्ड मेटल इण्डस्ट्रिज, आशा इण्डस्ट्रियल इस्टेट के पास, वीर सावरकर मार्ग, विरार-पूर्व, जिला थाणे 401305	2148 : 1981 विस्फोटी गैस पर्यावरणों के लिए बिजली के उपकरण-ज्वालासह आवरण	4-7-2007

[सं. केप्रवि/13 : 13]

ए. के. तलवार, उप महानिदेशक (प्रमाणन)

**BUREAU OF INDIAN STANDARDS**

New Delhi, the 21st August, 2007

S.O. 2453.—In pursuance of sub-regulation (6) of regulation 5 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given in the following schedule have been cancelled with effect from the date indicated against each :

**SCHEDULE**

Sl. No.	Licence No.	Name and Address of the licensee	Article/Process with relevant Indian Standard covered by the licence cancelled	Date of Cancellation
1.	7511060	Standard Metal Industries Near Asha Industrial Estate, Veer Savarkar Marg Virar (East), Distt.-Thane 401305	IS 2148 : 1981 Flameproof enclosures for electrical apparatus	4-7-2007

[No. CMD/13 : 13]

A. K. TALWAR, DDGM

नई दिल्ली, 21 अगस्त, 2007

का. आ. 2454.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988, के विनियम 4 के उप विनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं को लाइसेंस प्रदान किए गए हैं :

**अनुसूची**

क्रम सं.	लाइसेंस संख्या	वैधता तिथि	पार्टी का नाम एवं पता (कारखाना)	उत्पाद	आइ एस सं./भाग/खण्ड वर्ष
1	2	3	4	5	6
1.	7765802	29-7-2008	स्टारलाईट लाइटिंग लिमिटेड, 6, एम आय डी सी एरिआ, त्रिबक रोड, सातपुर, नासिक-422007	सामान्य प्रकाश व्यवस्थाओं के लिए स्वतः बालास्टकृत लैम्प भाग 2 कार्यकारिता अपेक्षाएँ	15111 : भाग-2 : 2002
2.	7765903	29-7-2008	एशियन इलेक्ट्रॉनिक्स लिमिटेड, सर्वे सं. 9/2/1, मुंबई आगरा रोड, विहोली, नासिक-422010	सामान्य प्रकाश व्यवस्थाओं के लिए स्वतः बालास्टकृत लैम्प भाग 2 कार्यकारिता अपेक्षाएँ	15111 : भाग-2 : 2002

1	2	3	4	5	6
3.	7763087	29-7-2008	एस आर इंडस्ट्रीज, संख्या 54, दूसरा माला, आदित्य इंडस्ट्रियल इस्टेट, चिंचोली बंदर रोड, मालाड (पश्चिम), मुंबई 400064	घरेलू और समान कार्यों के लिए स्विच	3854 : 1997
4.	7765192	26-7-2008	इलेक्ट्रोमैक्स इण्डस्ट्रीज, प्लॉट सं. 19/20, एस एन 126पी, श्रीकृष्ण को हा सो लि, आमली गाँव, सिलवासा, दादरा और नगर हवेली-396260	1100 वो तक एवं सहित कार्यकारी वोल्टता के लिए पी वी सी रोधित केबल	694 : 1990
5.	7765293	26-7-2008	इलेक्ट्रोमैक्स इण्डस्ट्रीज, प्लॉट सं. 19/20, एस एन 126पी, श्रीकृष्ण को हा सो लि, आमली गाँव, सिलवासा, दादरा और नगर हवेली-396260	पी वी सी रोधित (हैवीड्यूटी) विद्युत केबल भाग 1 1100 वोल्ट तक एवं सहित कार्यकारी वोल्टता के लिए	1554 : भाग-1 : 1988

[सं. केप्रवि/13 : 11]

ए. के. तलवार, उप महानिदेशक (प्रमाणन)

New Delhi, the 21st August, 2007

**S.O. 2454.**—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below in the following Schedule :

**SCHEDULE**

Sl. No.	Licence No.	Validity Date	Name and Address (factory) of the Party	Product	IS No./Part/Sec. Year
1.	7765802	29-7-2008	Starlite Lighting Limited, 6, M.I.D.C. Area, Trimbak Road, Satpur, Nashik-422007	Self Ballasted Lamps for General Lighting Services Part 2 : Performance Requirements	15111 : Part 2 : 2002
2.	7765903	29-7-2008	Asian Electronics Limited Survey No. 9/2/1, Mumbai Agra Road, Viholi, Nashik-422010	Self Ballasted Lamps for General Lighting Services Part 2 : Performance Requirements	15111 : Part 2 : 2002
3.	7763087	22-7-2008	S. R. Industries, No. 54, Second Floor, Aditya Industrial Estate, Chincholi Bunder Road, Malad (W), Mumbai-400064	Switches for domestic and similar purposes	3854 : 1997
4.	7765192	26-7-2008	Electromax Industries Plot No. 19/20 S.N. 126P, Shreekrishna Co. HS.S. Ltd., Amli Village, Silvasa Dadra and Nagar Haveli-396260	PVC Insulated cables for working voltages upto and including 1100 V	694 : 1990
5.	7765293	26-7-2008	Electromax Industries Plot No. 19/20 S.N. 126P, Shreekrishna CHSSL, Amli Village, Silvasa Dadra and Nagar Haveli-396260	PVC Insulated (heavy duty) electric cables : Part 1 For working voltages upto and including 1100 V	1554 : Part 1 : 1988

[No. CMD/13 : 11]

A. K. TALWAR, DDGM

नई दिल्ली, 21 अगस्त, 2007

का. आ. 2455.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिए गए मानक(कों) में संशोधन किया गया/किये गये हैं :

**अनुसूची**

क्रम सं.	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
1.	आई एस 14887 : 2000	संशोधन संख्या 1, अगस्त 2007	अगस्त 2007
2.	आई एस 14968 : 2001	संशोधन संख्या 2, अगस्त 2007	अगस्त 2007

इस संशोधन प्रति भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुरशाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चेन्नई, मुम्बई तथा शाखा कार्यालयों अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : टी एक्स/जी 25]

एम. एस. वर्मा, निदेशक एवं प्रमुख (टीएक्सडी)

New Delhi, the 21st August, 2007

S.O. 2455.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards, Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :

**SCHEDULE**

Sl. No.	No. and year of the Indian Standards	No. and year of the amendment	Date from which the amendment shall have effect
1.	IS 14887 : 2000	Amendment No. 1, August 2007	August 2007
2.	IS 14968 : 2001	Amendment No. 2, August 2007	August 2007

Copy of this Amendment is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref : TXD/G-25]

M. S. VERMA, Director &amp; Head (Textiles)

नई दिल्ली, 22 अगस्त, 2007

का. आ. 2456.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उप-नियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेन्सों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :

**अनुसूची**

क्रम सं.	लाइसेंस संख्या	चालू तिथि	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक व संबंधित भारतीय मानक
1	2	3	4	5
जुलाई 2007				
1.	8836804	25-6-2007	मैसर्स राजस्थान ट्रांसफॉर्मर्स एण्ड स्विचगियर (आरटीएस पावर कॉर्पो. की ईकाई) सी-174, रोड नं. 9 जे. विश्वकर्मा औद्योगिक क्षेत्र, जयपुर-302013 (राजस्थान)	14255 : 1995 एरियल बन्ड केबल्स
2.	8837196	27-6-2007	मैसर्स अमरनाथ फूड्स प्रा. लि., सर्वे नं. 113, 689/113, गांव गोविन्दी, तहसील नावा, जिला अजमेर-341509 (राजस्थान)	7224 : 1985 आयोडाइज्ड साल्ट

1	2	3	4	5
3.	8837297	27-6-2007	मैसर्स स्वास्तिक इण्डस्ट्रीज ई-354, (ए), रोड नं. 14-जे, विश्वकर्मा औद्योगिक क्षेत्र, जयपुर-302013 (राजस्थान)	8034 : 2002 सबमर्सिबल पम्प सैट
4.	8838303	28-6-2007	मैसर्स मनीष ज्वैलर्स पांच बत्ती के पास, महावीर बाजार, (राजस्थान)	1417 : 1999 स्वर्णाभूषणों की हाल मार्किंग
5.	8838202	27-6-2007	मैसर्स कुनान इण्डस्ट्रीज 847, देवी नगर, न्यू सांगानेर रोड, जयपुर (राजस्थान)	694 : 1990 पीवीसी इन्सुलेटेड केबल्स
6.	8838707	29-6-2007	मैसर्स महाराजा केबल्स जी-1/391, फेज-1 भिवाडी औद्योगिक क्षेत्र, भिवाडी जिला अलवर (राजस्थान)	7098 (भाग 1) : 1988 एक्सएलपीई इन्सुलेटेड पीवीसी केबल्स
7.	8840892	6-7-2007	मैसर्स अनुराग ज्वैलर्स सर्राफा बाजार, सुभाष चौक सीकर (राजस्थान)	1417 : 1999 स्वर्णाभूषणों की हाल मार्किंग
8.	8840993	6-7-2007	मैसर्स अनुराग ज्वैलर्स सर्राफा बाजार, सुभाष चौक सीकर (राजस्थान)	2112 : 2003 रजत आभूषणों की हाल मार्किंग
9.	8840387	5-7-2007	मैसर्स नन्दकिशोर मेघराज ज्वैलर्स प्रा. लि. 2981, एम.आई. रोड, जयपुर-302001 (राजस्थान)	1417 : 1999 स्वर्णाभूषणों की हाल मार्किंग
10.	8841692	10-7-2007	मैसर्स ग्वालियर पोलिपाईप्स लिमिटेड संजु एस्टेट, ए-170-171, इन्द्रप्रस्थ औद्योगिक क्षेत्र, रोड नं. 6, कोटा-324 005 (राजस्थान)	14930 (भाग 2) : 2001 कन्ड्यूट सिस्टम फॉर इलैक्ट्रिकल इन्सटालेशन
11.	8841793	10-7-2007	मैसर्स आशीष इण्डस्ट्रीज एफ-19, औद्योगिक क्षेत्र, कस्टम्स ऑफिस के पास, भीनमाल जिला-जालौर-343 029 (राजस्थान)	4984 : 1995 एचडीपीई पाईप्स
12.	8841894	10-7-2007	मैसर्स आशीष इण्डस्ट्रीज एफ-19, औद्योगिक क्षेत्र, कस्टम्स ऑफिस के पास, भीनमाल जिला-जालौर-343 029 (राजस्थान)	14151 (भाग 2) : 1999 क्यूसीपीई पाईप्स
13.	8842391	12-7-2007	मैसर्स नवरतन पाईप एण्ड प्रोफाईल लि. एसपी-6, रीको औद्योगिक क्षेत्र, खुशाखेडा, जिला-अलवर (राजस्थान)	3589 : 2001 स्टील पाईप्स फॉर वॉटर एण्ड सीवेज
14.	8842492	12-7-2007	मैसर्स नवरतन पाईप एण्ड प्रोफाईल लि. एसपी-6, रीको औद्योगिक क्षेत्र, खुशाखेडा, जिला-अलवर (राजस्थान)	1611 : 1998 स्टील ट्यूब्स फॉर स्ट्रक्चरल परपज

I	2	3	4	5
15.	8843797	12-7-2007	मैसर्स रॉयल इण्डस्ट्रीज गांव-सरू बाडी, वाया-छापर, तहसील-सुजानगढ़, जिला-चूरू (राजस्थान)	8112 : 1989 43 ग्रेड ओपीसी
16.	8844597	20-7-2007	मैसर्स रैलीसन इलेक्ट्रिकल्स प्रा. लि. बी-495 (सी), औद्योगिक क्षेत्र, फेस-1, भिवाडी, जिला-अलवर-301019 (राजस्थान)	7098 (भाग 1) : 1988 एक्सएलपीई इन्सुलेटेड पीवीसी केबल्स
17.	8844601	20-7-2007	मैसर्स रैलीसन इलेक्ट्रिकल्स प्रा. लि. बी-495 (सी), औद्योगिक क्षेत्र, फेस-1, भिवाडी, जिला-अलवर-301 019 (राजस्थान)	1554 (भाग 1) : 1988 पीवीसी इन्सुलेटेड (एचडी) केबल्स
18.	8845502	24-7-2007	मैसर्स भजनलाल सुरेशचन्द्र सराफ व्यावर, जिला-अजमेर-305 901 (राजस्थान)	1417 : 1999 स्वर्णभूषणों की हाल मार्किंग
19.	8845603	24-7-2007	मैसर्स भजनलाल सुरेशचन्द्र सराफ व्यावर, जिला-अजमेर-305 901 (राजस्थान)	2112 : 2003 रजत आभूषणों की हाल मार्किंग
20.	8846096	25-7-2007	मैसर्स कमल स्पांज स्टील एण्ड पॉवर लि. ए-160, रीको औद्योगिक क्षेत्र, फेस-II, बगरू, जयपुर (राजस्थान)	1786 : 1995 एचएसडी स्टील बार्स एण्ड वायर्स
21.	8838404	29-6-2007	मैसर्स निम्बस इण्डस्ट्रीज ई-35, बगरू, औद्योगिक क्षेत्र (विस्तार) बगरू, जिला-जयपुर-303007 (राजस्थान)	14151 (भाग 1) : 1999 पीई पाईप्स

[सं. सीएमडी/13 : 11]

ए. के. तलवार, उप महानिदेशक (मुहर)

New Delhi, the 22nd August, 2007

**S.O. 2456.**—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the grant of licence particulars of which are given in the following schedule :

**SCHEDULE**

Sl. No.	Licence No. (CM/L-)	Operative Date	Name and Address of the Licensee	Article/Process covered by the licences and the relevant IS : Designation
(1)	(2)	(3)	(4)	(5)
<b>July, 2007</b>				
01.	8836804	25-06-2007	M/s. Rajasthan Transformers and Switch-gear (A Unit of RTS Power Corpn. Ltd.) C-174, Road No. 9(J), Vishwakarma Industrial Area, Jaipur-302013 (Rajasthan)	14255 : 1995 Aerial Bunched Cables
02.	8837196	27-06-2007	M/s. Amarnath Foods Pvt. Ltd., Survey 113, 689/113, Village : Govindi Tehsil : Nawa, Distt. Ajmer-341 509 (Rajasthan)	7224 : 1985 Iodized Salt

1	2	3	4	5
03.	8837297	27-06-2007	M/s. Swastik Industries, E-354 (A), Road No. 14-J, Vishwakarma Industrial Area, Jaipur-302 013 (Rajasthan)	8034 : 2002 Submersible Pumpsets
04.	8838303	28-06-2007	M/s. Manish Jewellers, Near Paanch Bhatti, Mahavir Bazar, Beawar, Distt. Ajmer-305 901 (Rajasthan)	1417 : 1999 Hallmarking of Gold Jewellery
05.	8838202	27-06-2007	M/s. Kunan Industries, 847, Devi Nagar, New Sanganer Road, Jaipur (Rajasthan)	694 : 1990 PVC Insulated Cables
06.	8838707	29-06-2007	M/s. Maharaja Cables, G-1/391, Phase-I, Bhiwadi Industrial Area, Bhiwadi, Distt. Alwar-301 019 (Rajasthan)	7098 (Part 1) : 1998 XLPE Insulated PVC Cables
07.	8840892	06-07-2007	M/s. Anurag Jewellers, Sarrafa Bazar, Subhash Chowk, Sikar, (Rajasthan)	1417 : 1999 Hallmarking of Gold Jewellery
08.	8840993	06-07-2007	M/s. Anurag Jewellers, Sarrafa Bazar, Subhash Chowk, Sikar, (Rajasthan)	2112 : 2003 Hallmarking of Silver Jewellery
09.	8840387	05-07-2007	M/s. Nand Kishore Meghraj Jewellers Pvt. Ltd., 2981, M.I. Road, Jaipur-302 001 (Rajasthan)	1417 : 1999 Hallmarking of Gold Jewellery
10.	8841692	10-07-2007	M/s. Gwalior Polypipes Limited Sanju Estate, A-170-171, Indraprastha Industrial Area Road No. 6, Kota-324 005 (Rajasthan)	14930 (Part 2) : 2001 Conduit System for Electrical Installation
11.	8841793	10-07-2007	M/s. Ashish Industries, F-19, Industrial Area, Near Custom Office Bhinmal, Distt. Jalore-343 029 (Rajasthan)	4984 : 1995 HDPE Pipes
12.	8841894	10-07-2007	M/s. Ashish Industries, F-19, Industrial Area, Near Custom Office Bhinmal, Distt. Jalore-343 029 (Rajasthan)	14151 (Part 2) : 1999 QCPE Pipes
13.	8842391	12-07-2007	M/s. Navratan Pipe & Profile Ltd., SP-6, RIICO Industrial Area, Khushkhera, Distt. Alwar, (Rajasthan)	3589 : 2001 Steel Pipes for Water & Sewage
14.	8842492	12-07-2007	M/s. Navratan Pipe & Profile Ltd., SP-6, RIICO Industrial Area, Khushkhera, Distt. Alwar (Rajasthan)	1161 : 1998 Steel Tubes for Structural purposes

1	2	3	4	5
15.	8843797	12-07-2007	M/s. Royal Industries, Village : Saru Bari, Via : Chhappar, Tehsil : Sujangarh, Distt. Churu, (Rajasthan)	8112 : 1989 43 Grade OPC
16.	8844597	20-07-2007	M/s. Rallison Electricals Pvt. Ltd., B-495(C), Industrial Area, Phase-I, Bhiwadi, Distt. Alwar-301 019 (Rajasthan)	7098 (Part 1) : 1988 XLPE Insulated PVC Cables
17.	8844601	20-07-2007	M/s. Rallison Electricals Pvt. Ltd., B-495 (C), Industrial Area, Phase-I, Bhiwadi, Distt. Alwar-301 019 (Rajasthan)	1554 (Part 1) : 1988 PVC Insulated (HD) Cables
18.	8845502	24-07-2007	M/s. Bhajanlal Suresh Chandra Sarraf, Beawar, Distt. Ajmer-305 901 (Rajasthan)	1417 : 1999 Hallmaking of Gold Jewellery
19.	8845603	24-07-2007	M/s. Bhajanlal Suresh Chandra Sarraf, Beawar, Distt. Ajmer-305 901 (Rajasthan)	2112 : 2003 Hallmarking of Silver Jewellery
20.	8846096	25-07-2007	M/s. Kamal Sponge Steel & Power Ltd., A-160, RIICO Industrial Area, Phase-II, Bagru, Jaipur, (Rajasthan)	1786 : 1985 HSD Steel Bars & Wires
21.	8838404	29-06-2007	M/s. Nimbus Industries, E-35, Bagru Industrial Area (Extn.) Bagru, Distt. Jaipur-303 007 (Rajasthan)	14151 (Part 1) : 1999 PE Pipes

[No. CMD/13 : 11]

A.K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 27 अगस्त, 2007

का. आ. 2457.—भारतीय मानक ब्यूरो प्रमाणन विनियम, 1988, के विनियम 5 के उप विनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि वे लाइसेंस जिनके विवरण नीचे अनुसूची में दिए गए हैं उनके आगे दर्शाए गई तिथि से जारी किए गए हैं :

### अनुसूची

क्रम सं.	लाइसेंस संख्या	रद्दीकरण तिथि	पार्टी का नाम और पता	रद्द किए गए लाइसेंस का भारतीय मानक के अनुसार प्रसंस्करण	भा.मा./भाग/विभाग/वर्ष
1	2	3	4	5	6
1	7024756	03-07-2007	जोसेफ लेसली ड्रगर मैन्यु. प्रा. लि., गाला संख्या 1 से 5, 1ला माला, व्होरा इंडस्ट्रियल ईस्टेट, सागर मंथन ईस्टेट के बाजूमें, भोईदापाडा विलेज, गोखिबरे, वसई, जिला थाणे-401 208		भामा : 8523 : 1977
2	7403057	03-07-2007	विश्वेश्वर्या एन्टरप्राइजेस, पोस्ट बॉक्स संख्या 15, प्लॉट संख्या- डब्ल्यू-284, एमआयडिसी, रबाले, नवी मुंबई, जिला थाणे-400 701	रेस्पिरेटोर्स, प्रोटेक्शन केमिकल कार्टिज, ऑर्गेनिक वेपोर्स अमोनिक और क्लोरीन सिर्फ	भामा : 8522 : 1977

[सं. केप्रवि/13 : 13]

ए. के. तलवार, उप महानिदेशक (मुहर)

New Delhi, the 27th August, 2007

**S.O. 2457.**—In pursuance of sub-regulation (6) of regulation 5 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule have been cancelled with effect from the date indicated against each :

**SCHEDULE**

Sl. No.	Licence No.	Name and Address of the licensee	Article/Process with relevant Indian Standard covered by the licence cancelled	Date of Cancellation
1.	7024756	Joseph Leslie Dranger Mfg. Pvt. Ltd., Gala No. 1 to 5, First Floor, Vora Indl. Estate, Near Sagar Manthan Estate, Bhoidapada Village, Gokhivare, Thane Vasai, Maharashtra-401 208	IS 8523 : 1977	03-07-2007
2.	7403057	Vishveshvara Enterprises, P.B. NO. 15, Plot No. W-284, MIDC, Rabale Thane, New Mumbai, Maharashtra-400 701	IS : 8522 : 1977 Respirators, Chemical Cartridge for Lprotection against Organic Vapours Ammonic and Chlorine only.	03-07-2007

[No. CMD/13 : 13]

A.K. TALWAR, Dy. Director General (Marks)

नई दिल्ली, 27 अगस्त, 2007

**का. आ. 2458.**—भारतीय मानक ब्यूरो प्रमाणन विनियम, 1988, के विनियम 4 के उपविनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि वे लाइसेंस जिनके विवरण नीचे अनुसूची में दिए गए हैं उनके आगे दर्शाए गई तिथि से जारी किए गए हैं :

**अनुसूची**

क्रम सं.	लाइसेंस संख्या	वैधता	पार्टी का नाम और पता	उत्पादन	भा.मा./भाग/विभाग/वर्ष
1	2	3	4	5	6
1.	7756797	15-07-2008	वायटल एन्टरप्राइजेस नं. 5 और 6, क्लीवाला कंपाऊंड, तुंगा विलेज, साकी विहार रोड, अंधेरी (पूर्व), मुंबई-400 072	पैकेजबंद पेयजल	भामा : 14543 : 2004
2.	7734686	24-04-2008	सायन्टिफिक अपार्टस मैन्युफैक्चरिंग कंपनी, ब्लॉक नं. 1, 3री मंजिल, मोहला भवन, ऑफ डॉ. ई. मोसेस रोड, वरली, मुंबई-400 018	डेनसिटी हायड्रोमिटर्स भाग 1	भामा : 3104 : भाग 1 : 1982
3.	7746188	29-05-2008	ओशियन बेव्हेरेजेस नासिक प्रा.लि. 5 सारंग अपार्टमेंट, जे.बी. नगर, विसे मला, कॉलेज रोड, सिन्नर, नासिक-422 005	पैकेजबंद पेयजल	भामा : 14543 : 2004
4.	7758296	09-07-2008	झरना अक्वा ड्रिंक प्रा. लि., वसई-वज्रेश्वरी रोड, पोस्ट-पारोल, तालुका-वसई, जिला-थाणे-401 303	पैकेजबंद पेयजल	भामा : 14543 : 2004

1	2	3	4	5	6
5.	7735183	29-04-2008	स्काय इंडस्ट्रिज लिमिटेड, सी-58, टीटीसी इंडस्ट्रियल एरिया, थाणे-बेलापूर रोड, पावने, नवी मुंबई, जिला थाणे-400 705	ग्राहक उपयोगी सिंथेटिक हूक और लूप टेप फास्टनर्स	भामा : 8156 : 1994
6.	7743889	22-05-2008	प्युअर अक्वा, नेहाचा मला, मासवान पेट्रोल पम्प के सामने, पालघर-मनेर रोड, पालघर, जिला-थाणे-401 104	पैकेजबंद पेयजल	भामा : 14543 : 2004
7.	7738290	10-5-2008	मंगल ब्लिच केम, गट संख्या 111/बी, ओझरखंड कॉलोनी के पीछे, पोस्ट-लखमपूर, दिंडोरी, नासिक-422 202	ब्लिचिंग पावडर, स्टेबल	भामा : 1065 : 1989
8.	7721071	28-05-2008	बॉम्बे मार्केटिंग, टि-70, माटुंगा सिंधी कॉलोनी, किंग सर्कल रेलवे स्टेशन, बुधाजी रोड एक्सटेंशन, मुंबई-400 022	पैकेजबंद पेयजल	भामा : 14543 : 2004
9.	7748495	05-06-2008	दिपक लॅब्स, रानी अहिल्यादेवी मार्ग, द्वारकाधीश साँ मिल के सामने, नांदगांव, नासिक-423 106	डिसइन्फेक्टेंट फ्लूइडस, फिनोलिक टाईप	भामा : 1061 : 1997
10.	7742382	17-5-2008	अर्शा केमिकल्स प्रा. लि., 17/27, एमआयडिसी इंडस्ट्रियल एरिया, तलोजा, रायगढ़-410 208 महाराष्ट्र राज्य	सोडियम हायपोक्लोराइट सोल्यूशन	भामा : 11673 : 1992

[सं.केप्रवि/13 : 11]

ए. के. तलवार, उप महानिदेशक (मुहर)

New Delhi, the 27th August, 2007

**S.O. 2458.**—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below in the following schedule :

**SCHEDULE**

Sl. No.	Licence No.	Validity Date	Name and Address (factory) of the Party	Product	IS No./Part/Sec. Year
1	2	3	4	5	6
1.	7756797	15-07-2008	Vital Enterprises No. 5&6, Clipwala Compound, Tungva Village, Saki Vihar Road, Andheri (E), Mumbai-400072	Packaged Drinking Water (other than Package, Natural Mineral Water)	IS 14543 : 2004
2.	7734686	24-4-2008	Scientific Apparatus Manufacturing Company, Block No. 1, 3rd Floor, Mohatta Bhawan, Off Dr. E. Moses Road, Worli, Mumbai-400018	Density hydrometers : Part 1 Requirements	IS 3104 : Part 1 : 1982

1	2	3	4	5	6
3.	7746188	29-5-2008	Ocean Beverages (Nasik) Pvt. Ltd., 5, Sarang Apartment, J. B. Nagar, Vise Mala, College Road, Sinnar, Nashik-422005	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543 : 2004
4.	7758296	09-07-2008	Zarna Aqua Drinks Pvt. Ltd., Vasai-Vajreshwari Road, Post Parol, Taluka Vasai Thane-401 303	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543 : 2004
5.	7735183	29-4-2008	Sky Industries Limited, C-58, TTC Indl. Area, Thane-Belapur Road, Pawane, Navi Mumbai, Thane-400 705	Fasteners for consumer goods synthetic hook and loop tape.	IS 8156 : 1994
6.	7743889	22-5-2008	Pure Aqua, Nehacha Mala, Opp. Maswan, Petrol Pump, Palghar Manor Road, Palghar, Thane-401 401	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543 : 2004
7.	7738290	10-5-2008	Mangal Bleach Chem, Gut No. 111/B, Behind Ozarkhed Colony, At Post Lakhmapur, Dindori, Nashik-422 202	Bleaching Powder, Stable	IS 1065 : 1989
8.	7721071	25-05-2008	Bombay Marketing, T-70, Matunga Sindhi Colony, King Circle Railway Station, Bhaudaji Road Extension, Mumbai-400 022	Packaged Drinking Water (other than Packaged Natural Mineral Water)	IS 14543 : 2004
9.	7748495	05-06-2008	Deepak Labs, Rani Ahilyadevi Marg, Opp. Dwarkadish Saw Mill, Nandgaon, Nashik-423 106	Disinfectant Fluids, Phenolic Type	IS 1061 : 1997
10.	7742382	17-5-2008	Aarsha Chemicals Pvt. Ltd., 17/27, MIDC Indl. Area, Talaja, Raigarh-410208.	Sodium Hypochlorite Solution	IS 11673 : 1992

[No. CMD/13 : 11]

A. K. TALWAR, Dy. Director General (Marks)

## पेट्रोलियम और प्राकृतिक गैस मंत्रालय

## संशोधन

नई दिल्ली, 20 अगस्त, 2007

का. आ. 2459.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि गेल (इण्डिया) लिमिटेड द्वारा आर. एल. एन. जी. के परिवहन के लिए मध्य प्रदेश राज्य में कैलारस-मालनपुर स्पर पाइपलाइन बिछाई जानी चाहिए;

और केन्द्रीय सरकार ने, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उप-धारा (1) के अधीन जारी पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का. आ. 769(अ) दिनांक 30-05-2005 एवं का. आ. 881(अ) दिनांक 17-06-2005, संलग्न तत्संबंधी अनुसूचियों में विनिर्दिष्ट भूमि में उपयोग के अधिकार के अर्जन के लिये जारी की थी ;

अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह समाधान हो जाने पर कि लोकहित में ऐसा करना आवश्यक है, यह निर्देश देती है कि भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की ऊपर उल्लेखित अधिसूचनाओं में नीचे वर्णित सारणी में विनिर्दिष्ट रीति से संशोधन किया जा सकेगा।

### शुद्धि-पत्र

भारत के असाधारण राजपत्र सं. 635 दिनांक 24-06-2005 के का. आ. सं. 881 (अ) दिनांक 17-06-2005 के पेज सं. 12 एवं भारत के असाधारण राजपत्र सं. 561, दिनांक 06-06-2005 के का. आ. सं. 769(अ), दिनांक 30-05-2005 के पेज सं. 3 व 13 पर

राजपत्र के अनुसार			पढ़िये		
ग्राम	सर्वे नं.	क्षेत्रफल (हेक्टेयर में.)	ग्राम	सर्वे नं.	क्षेत्रफल (हेक्टेयर में.)
बड़वारी	1324	0.07	बड़वारी	1324 म	0.11
कैलारस	337	0.10	कैलारस	337	0.15
बुढेरा	357	0.02	बुढेरा	357	0.18

[फाईल सं. एल-14014/15/07-जी. पी. (भाग-I)]

एस. बी. मण्डल, अवर सचिव

## MINISTRY OF PETROLEUM AND NATURAL GAS

### AMENDMENT

New Delhi, the 20th August, 2007

**S. O. 2459 .—**Whereas it appears to the Central Government that it is necessary in the public interest that for the transportation of R-LNG through Kailaras to Malanpur spur pipeline in the State of Madhya Pradesh, a pipeline should be laid by Gail (India) Limited;

And whereas, the Central Government issued notification under Sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) vide Ministry of Petroleum and Natural Gas notification No. S. O. 769(E), dated 30-05-2005 and S. O. 881(E), dated 17-06-2005 for acquisition of Right of User in the land specified in the annexure to the notifications;

Now, in exercise of the powers conferred by Sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government, being satisfied that it is necessary in the public interest, to do so, hereby directs that the above-mentioned notifications of the Government of India be amended in the manner specified in the schedule below :—

### CORRIGENDUM

In Extraordinary Gazette of India No. 635, dated 24-06-2005 vide S. O. No. 881(E), dated 17-06-2005 on Page No. 23 and in Extraordinary Gazette of India No. 561, dated 06-06-2005 vide S. O. No. 769(E), dated 30-05-2005 Page Nos. 37 and 46.

As Per Gazette			Be read as		
village	Survey No.	Area (in Hect.)	Village	Survey No.	Area (in Hect.)
Barwari	1324	0.07	Barwari	1324 M	0.11
Kailaras	337	0.10	Kailaras	337	0.15
Budera	357	0.02	Budera	357	0.18

[File No. L-14014/15/07-G.P. (Part-I)]

S. B. MANDAL, Under Secy.

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2460.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि तमिलनाडु राज्य में चेन्नै से कर्नाटक राज्य में बेंगलुरु तक पेट्रोलियम उत्पादों के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए;

और, केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि उस भूमि में, जो इस अधिसूचना से संलग्न अनुसूची में वर्णित है और जिसमें पाइपलाइन बिछाए जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए;

अतः, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको उक्त अधिनियम की धारा 3 की उपधारा (1) के अधीन भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाए जाने के संबंध में, श्री आर. आर. जन्नु, सक्षम प्राधिकारी, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, पाइपलाइन डिवीजन, 719 भूतल फ्लोर, 4वां क्रॉस, 7वां मेन, कल्याण नगर, 1 ब्लॉक, बेंगलुरु-560043 कर्नाटक को लिखित रूप से भेज सकेगा।

## अनुसूची

तालुका : मुलबागल जिला : कोलार राज्य : कर्नाटक

गाँव का नाम	सर्वेक्षण सं/ उप-खण्ड सं.	क्षेत्रफल हेक्टर	एयर वर्गमीटर	
1	2	3	4	5
कसवुगान्हल्लि	19	00	00	09
	20/पी1	00	32	18
	17/1	00	00	71
	17/2	00	02	26
	16	00	07	75
	20/पी2	00	08	03
	20/3ए	00	42	21
	20/3बी	00	13	68
	20/4	00	16	22
	20/5	00	15	64
	24/8	00	04	83
	24/9	00	01	70
	57	00	19	87
	22/पी1	00	64	76
	22/पी2	—	—	—

1	2	3	4	5
जियापल्ली	35	00	33	08
	34	00	21	38
	38	00	07	93
	42	00	73	65
	40	00	32	30
	41	00	11	31
	53	00	03	16
	54	00	06	33
	56	00	37	35
पायस्थानहलि	34/पी2	00	08	75
	34/पी3	00	16	24
	34/पी4	00	01	95
	34/पी5	00	01	75
	34/पी6-P1	00	10	33
	34/पी6-P2	—	—	—
	34/पी7	—	—	—
	34/पी8	00	11	43
	34/पी9	00	11	26
	34/पी10	00	18	43
	34/पी13	00	40	08
	35	00	05	96
	36/पी1	00	07	00
रामचन्द्रपुरा	82/पी1	00	22	20
	82/पी24	00	00	83
	82/पी15	00	21	51
	82/पी21	00	15	44
	82/पी22	00	06	24
	82/पी23	00	21	98
	82/पी33	00	10	84
	82/पी39	00	03	50
	83	00	26	79
	93/2	00	20	03
	94	00	01	23
	37/पी1	00	16	69
	37/पी3	00	18	33
	37/पी4	00	17	85
	40	00	33	09
	42/1	00	07	42
	46/2	00	07	63
	46/1	00	01	79
	45	00	09	35
	44	00	01	45
	48/5	00	04	40
माइलापुरा	31	00	13	02
	29	00	10	42
	26/2	00	02	14

1	2	3	4	5	1	2	3	4	5
माइलापुरा (जारी)	30	00	06	81	वज्रनागेनाहल्लि	41/पी1	00	18	57
काम्मासन्दा	11	00	18	92		41/पी2	00	15	96
	10	00	06	47		23	00	03	29
	9	00	04	68		39/2	00	13	68
	8	00	07	20		40	00	02	64
	65/2	00	15	14		43	00	49	96
	65	00	11	19		56	00	05	89
	63	00	11	06		57	00	42	03
	40/1	00	18	71	जाधमंगलाअग्रहरा	94/पी4	00	30	76
	40/2	00	18	69		94/पी5	00	24	58
	39	00	00	76		94/पी11	00	18	68
	35/2	00	11	71		94/पी31	00	14	30
पुल्लोबारेंडीहल्लि	55	00	19	75		94/पी47	00	14	35
	50	00	33	96		94/पी35	00	22	17
	54	00	02	59		94/पी36	00	07	67
	51	00	03	98		94/पी43	00	13	04
	72	00	20	25		94/पी45	00	31	79
	74	00	00	09		93/पी2	00	13	85
	37	00	96	01		93/1	00	11	47
चिक्कागुट्टाहल्लि	17	00	16	61		93/पी9	00	33	70
	18/2	00	19	55	डोम्मासन्दा	10/पी2	00	16	08
	19/1	00	03	79	सगोंडाहल्लि	60/पी1	00	22	99
	13	00	11	67		60/पी2	00	20	63
	20/पी2	00	14	24		60/पी11	00	20	46
	20/पी1	00	06	17		60/पी20	00	16	53
	21/2	00	00	87		60/पी41	00	16	10
	21/3	00	09	52		60/पी53	00	21	06
	21/4	00	10	05		60/पी59	00	19	18
	21/5	00	01	23		60/पी58	00	23	52
	2	00	10	71		75	00	03	81
	35/पी1	00	00	9		77/1	00	16	51
	35/पी2	00	03	31		77/2	00	06	30
	35/पी3	00	06	28	कीलागाणी	141/पी1	00	27	04
	34/पी1	00	10	99		141/पी34	00	03	66
	34/पी2	00	07	37		218	00	21	37
	34/पी3	00	00	09		184/3	00	00	09
	32	00	16	95		185/2	00	19	10
	31	00	10	78		184/1	00	23	45
	30/1	00	13	13		185/1	00	00	25
डोड्डागुट्टाहल्लि	17/पी5	00	12	03		193	00	26	90
कृष्णापुरा	2	00	11	85		202	00	11	82
	3	00	24	29		203	00	02	08
	4	00	07	09		201	00	10	45
	5	00	29	92		199/4	00	01	74
	6	00	17	29		199/3	00	12	74
	7	00	04	38		199/2	00	00	24
	8	00	28	96					
	9	00	20	33					

1	2	3	4	5	1	2	3	4	5
कीलागाणी (जारी)	205/5	00	13	10	मेलागाणी (जारी)	71/2	00	08	76
	205/1	00	11	15		71/1	00	08	98
	2	00	14	30		71/3	00	02	71
	4/4	00	05	64		73	00	14	84
	4/2	00	05	40		77/1	00	09	11
	4/3	00	00	09		77/3	00	16	10
	5	00	12	93		77/2	00	12	58
	6/2	00	00	32		78	00	14	76
	6/3	00	10	84		79/1	00	01	05
	6/5	00	18	27		81/2	00	01	89
	7/2	00	02	05		81/3	00	08	98
	12	00	28	19		81/4	00	18	21
	19	00	04	91		82/2	00	09	25
	20	00	00	48		83/2	00	14	13
	18	00	01	07		84	00	14	88
	21	00	06	82		85/1	00	03	37
	22	00	18	94		86	00	14	81
	99	00	12	35		87	00	12	73
	100/3	00	00	16		89	00	00	22
	100/2	00	00	15		88/1	00	17	51
	98	00	00	31		88/2	00	04	09
	97	00	04	97		149	00	18	91
	96	00	00	61		145/2	00	01	83
	29/4	00	01	85	पडाकास्ति	4/1	00	20	32
	31/4	00	07	20		80	00	28	52
	31/3	00	00	54		82	00	07	66
	31/5ए	00	02	45		79	00	09	82
	31/5बी	00	02	45		78/1	00	34	61
	34	00	06	14		78/2	—	—	—
	31/2	00	00	39		77/1	00	09	24
	33	00	07	35		77/2	—	—	—
मेलागाणी	34/3	00	00	73		69/1	00	17	35
	34/4	00	00	48		69/2	00	22	69
	35	00	00	48		69/4	00	21	34
	38	00	06	17		70	00	09	72
	37/4	00	00	94		71	00	40	86
	37/3	00	01	96	कन्नथा	42/1ए	00	40	50
	37/2	00	02	27		42/1बी	—	—	—
	37/5	00	03	21		42/2ए	—	—	—
	37/1	00	01	14		42/2बी	—	—	—
	39	00	07	36		40/2	00	11	16
	28/4	00	00	85	कुरुबा-चन्दुमनाहल्लि	44	00	00	04
	28/5	00	04	85		318	00	13	50
	28/1	00	01	86		46/1	00	00	46
	40/2	00	00	07		46/2	—	—	—
	40/1	00	03	91		47/1	00	09	53
	28	00	00	07		43	00	21	60
	26/1	00	04	53		71	00	02	73
	26/2	—	—	—		74	00	24	48

1	2	3	4	5	1	2	3	4	5
कुरुबा-चन्दुमनाहल्लि	93	00	09	00	येडाहल्लि (जारी)	60/2ए-पी2	—	—	—
	89	00	01	40		62/3पी	00	07	55
	90	00	14	94		61	00	27	46
	91	00	07	74		67/पी2	00	11	53
	64	00	03	24		67/पी3	00	11	65
	2/2	00	00	18		67/पी4	00	22	45
	65/2	00	16	92		67/पी5	00	00	47
	66	00	07	38		87	00	02	12
	67/2	00	01	54		88	00	11	54
	72	00	09	90		106	00	08	72
	37	00	02	80		105/पी1	00	06	43
	49	00	07	49		105/पी2	—	—	—
	50/2	00	07	43		90	00	16	84
	52/1	00	15	16		86	00	12	37
	52/2	00	06	64		75	00	33	55
	51	00	11	33		76/4	00	06	40
	2/1	00	00	12	चित्त्येरी	66/पी2	00	12	06
	87/1	00	07	07		88	00	18	86
	87/2	00	11	25		65/पी2	00	20	52
	86/1	00	01	48		63	00	00	13
	86/2	00	16	21		58	00	05	04
	85	00	00	13		57	00	23	78
बल्लाअग्रहरा	76	00	17	83		56/3	00	02	63
	80/1	00	01	95		56/1	00	17	38
	80/10	00	37	28		56/2	00	02	46
	80/11	00	23	41		80	00	10	02
	78	00	28	05		55/5	00	00	18
	79	00	08	55		55/6	00	03	36
चनापुरा	31/2	00	01	72		55/7	00	05	74
	31/1	00	09	18		55/8	00	05	37
	29/2	00	12	42		5	00	07	68
	29/1	00	10	74		53/2	00	06	01
	28	00	23	14		53/1	00	26	96
	133	00	07	94		53/4	00	00	40
	120/2पी	00	00	23		86	00	14	07
	120/3	00	07	55		40	00	06	45
	119/2	00	05	82	उरकुटेमिट्टुरु	47	00	07	04
	119/1	00	22	81		45/1	00	09	03
	118	00	23	77		45/2	00	05	44
	105/1पी	00	18	17		44	00	18	77
	122	00	50	34		35/1	00	13	80
	106/10	00	07	28		34/10	00	01	17
	115/पी1	00	51	70		34/15	00	11	72
	115/पी2	00	30	53		16/1पी1	00	05	02
	147	00	02	20		16/1पी2	00	08	32
येडाहल्लि	57/पी1	00	00	77		16/2	00	02	79
	60/2बी	00	23	95		16/3	00	03	15
	6/2ए-पी1	00	16	89		16/4	00	03	45

1	2	3	4	5	1	2	3	4	5
उरकुंटेमिट्टुरु (जारी)	16/5	00	04	26	आवलमारक्कालागट्टा	41/2	00	00	07
	16/9	00	00	09	(जारी)	28/2	00	16	15
	12	00	12	42		39	00	06	97
	11/2	00	01	22		40	00	05	59
	11/3	00	05	37		34	00	23	09
	10/5	00	03	39		32/1	00	04	39
	10/6	00	00	07		32/2	00	01	50
	9/1	00	16	97		32/3	00	02	66
	9/2	00	02	76		31/2	00	00	77
	8	00	13	43		31/3	00	00	61
	7	00	04	32		31/5	00	01	19
	5/1	00	19	81		31/4	00	01	33
	6	00	04	44		30	00	21	52
	350/2	00	06	61		3/2	00	03	10
	350/1	00	00	61		3/1	00	00	96
	351	00	04	94		4/2	00	02	59
	349	00	03	05		4/1	00	13	31
	329/1ए	00	02	62		23	00	21	25
	333	00	15	72		23/पी5	00	03	06
	334	00	02	00		23/पी6	00	06	36
	335	00	08	38		5	00	02	05
	337	00	06	98		6	00	00	92
	259/2	00	04	36		7	00	09	42
	259/5	00	00	12		21/1	00	08	77
	259/6	00	00	09		20/2	00	14	23
	259/7	00	03	78		20/1	00	02	59
	259/8	00	00	94		19/1	00	09	94
	258/4	00	02	62		19/2	00	07	80
	258/3	00	00	84		14/1	00	00	69
	261/3	00	00	66		16/2	00	10	96
	261/2	00	02	64		16/1	00	10	90
	261/1	00	04	17		15/2	00	08	05
	257/4	00	01	06		15/1	00	07	42
	257/5	00	00	78					
	257/1	00	00	88	मिणिजेनहल्लि	17/2	00	00	38
	220	00	00	09		18/1	00	13	25
	263/1	00	02	43		18/2	00	17	43
	218	00	13	16		18/3	00	24	89
	217/2	00	05	72		19/2	00	00	92
	219	00	13	49		20/2	00	01	07
	223/2	00	03	16		20/3	00	01	58
	214	00	11	20		20/4	00	01	42
	212	00	03	45		20/5	00	01	83
	211/1	00	10	16		20/7	00	01	90
	211/2	00	00	20		27/2	00	02	70
	48/1	00	15	12		27/3	00	02	59
	48/2	00	23	76		27/4	00	02	44
आवलमारक्कालागट्टा	42	00	06	65		27/5	00	03	73
	41/1	00	07	66		27/6	00	05	60

1	2	3	4	5
मिणिजेनहल्लि (जारी)	31/1	00	01	83
	31/2	00	03	01
	31/3	00	03	78
	32/1	00	02	02
	32/2	00	02	25
	32/3	00	03	43
	36/1	00	04	32
	36/2	00	01	03
	36/3	00	00	28
	35	00	04	34
	33/2	00	01	50
	39/7	00	00	28
	40	00	29	51
	81	00	11	04
	82/7	00	03	68
	82/6	00	03	21
	83/3	00	12	61
	83/2	00	10	33
	84/6	00	07	25
	87/1	00	05	08
	85/7	00	05	67
	85/6	00	03	83
	85/5	00	02	82
	85/4	00	00	74
	86/4	00	03	85
	86/3	00	04	48
	86/2	00	10	06
	86/1	00	11	21
	117	00	06	29
	116/2	00	08	16
	115	00	01	80
	128/2	00	32	50
	128/3	-	-	-
	128/5	-	-	-
	129/1	00	00	50
	129/2	00	13	50
	130/पी1	00	10	19
	130/पी2	-	-	-
	134/1	00	00	55
	134/2	00	07	51
	134/3	00	09	44
	133/5	00	00	67
	133/1	00	07	64
	133/2पी1	00	03	02
	133/2पी2	-	-	-
	133/3	00	01	59
बन्डहल्लि	122	00	10	80
	4	00	27	36
	5	00	10	08

[फा. सं. आर-25011/8/2007-ओ.आर.-1]

एस. के. चिटकारा, अवर सचिव

New Delhi, the 24th August, 2007

**S.O. 2460.**—Whereas it appears to the Central Government that it is necessary in the public interest that for the transportation of the petroleum products from Chennai in the State of Tamilnadu to Bangalore in the State of Karnataka, a pipeline should be laid by the Indian Oil Corporation Limited;

And, whereas it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the Right of User in the land under which the said pipeline is proposed to be laid which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962, (50 of 1962) the Central Government hereby declares its intention to acquire the right of user therein.

Any person interested in the land described in the said Schedule may, within twenty one days from the date on which the copies of this notification issued under sub-section (1) of Section 3 of the said Act, as published in the Gazette of India are made available to the general public, object in writing to the acquisition of the right of user therein or laying of the pipeline under the land to Shri R. R. Jannu, Competent Authority, Indian Oil Corporation Limited, Pipelines Division, 719 Ground Floor, 4th Cross, 7th Main, Kalyana Nagar, 1st Block, Bangalore -560043 (Karnataka).

**SCHEDULE**

Taluka : Mulbagal	District : Kolar	State : Karnataka		
Name of the village	Survey No./ Sub-division No.	Area		
		Hectare	Are	Sq. mtr.
1	2	3	4	5
Kasavuganahally	19	00	00	09
	20/P1	00	32	18
	17/1	00	00	71
	17/2	00	02	26
	16	00	07	75
	20/P2	00	08	03
	20/3A	00	42	21
	20/3B	00	13	68
	20/4	00	16	22
	20/5	00	15	64
	24/8	00	04	83
	24/9	00	01	70
	57	00	19	87
	22/P1	00	64	76
	22/P2	—	—	—
Jiyapalle	35	00	33	08
	34	00	21	38

1	2	3	4	5	1	2	3	4	5
Jiyapalle (Contd.)	38	00	07	93	Kammasandra	66/2	00	15	14
	42	00	73	65	(Contd.)	65	00	11	19
	40	00	32	30		63	00	11	06
	41	00	11	31		40/1	00	18	71
	53	00	03	16		40/2	00	18	69
	54	00	06	33		39	00	00	76
	56	00	37	35		35/2	00	11	71
Payasthanahalli	34/P2	00	08	75	Pullobareddyhalli	55	00	19	75
	34/P3	00	16	24		50	00	33	96
	34/P4	00	01	95		54	00	02	59
	34/P5	00	01	75		51	00	03	98
	34/P6-P1	00	10	33		72	00	30	25
	34/P6-P2	—	—	—		74	00	00	06
	34/P7	—	—	—		37	00	96	01
	34/P8	00	11	43	Chikkaguttahalli	17	00	16	61
	34/P9	00	11	26		18/2	00	19	55
	34/P10	00	18	43		19/1	00	03	79
	34/P13	00	40	08		13	00	11	67
	35	00	05	96		20/P2	00	14	24
	36/P1	00	07	00		20/P1	00	06	17
Ramachandrapura	82/P1	00	22	20		21/2	00	00	87
	82/P24	00	00	83		21/3	00	09	52
	82/P15	00	21	51		21/4	00	10	05
	82/P21	00	15	44		21/5	00	01	23
	82/P22	00	06	24		2	00	10	71
	82/P23	00	21	98		35/P1	00	00	9
	82/P33	00	10	84		35/P2	00	03	31
	82/P39	00	03	50		35/P3	00	06	28
	83	00	26	79		34/P1	00	10	99
	93/2	00	20	03		34/P2	00	07	37
	94	00	01	23		34/P3	00	00	09
	37/P1	00	16	69		32	00	16	95
	37/P3	00	18	33		31	00	10	78
	37/P4	00	17	85		30/1	00	13	13
	40	00	33	09	Doddaguttahalli	17/P5	00	12	03
	42/1	00	07	42	Krishnapura	2	00	11	85
	46/2	00	07	63		3	00	24	29
	46/1	00	01	79		4	00	07	09
	45	00	09	35		5	00	29	92
	44	00	01	45		6	00	17	29
	48/5	00	04	40		7	00	04	38
Mailapura	31	00	13	02		8	00	28	96
	29	00	10	42		9	00	20	33
	26/2	00	02	14	Vajranagenahalli	41/P1	00	18	57
	30	00	06	81		41/P2	00	15	96
Kammasandra	11	00	18	92		23	00	03	29
	10	00	06	47		39/2	00	13	68
	9	00	04	68		40	00	02	64
	8	00	27	29					

1	2	3	4	5	1	2	3	4	5
Vajranagenahalli (Contd.)	43	00	49	96		6/3	00	10	84
	56	00	05	89		6/5	00	18	27
	57	00	42	03		7/2	00	02	05
Jathamangala- agrahara	94/P4	00	30	76		12	00	28	19
	94/P5	00	24	58		19	00	04	91
	94/P11	00	18	68		20	00	00	48
	94/P31	00	14	30		18	00	01	07
	94/P47	00	14	35		21	00	06	82
	94/P35	00	22	17		22	00	18	94
	94/P36	00	07	67		99	00	12	35
	94/P43	00	13	04		100/3	00	00	16
	94/P45	00	31	79		100/2	00	00	15
	93/P2	00	13	85		98	00	00	31
	93/1	00	11	47		97	00	04	97
	93/P9	00	33	70		96	00	00	61
Dommasandra	10/P2	00	16	08		29/4	00	01	85
Sangodahalli	60/P1	00	22	99		31/4	00	07	20
	60/P2	00	20	63		31/3	00	00	54
	60/P11	00	20	46		31/5A	00	02	45
	60/P20	00	16	53		31/5B	—	—	—
	60/P41	00	16	10		34	00	06	14
	60/P53	00	21	06		31/2	00	00	39
	60/P59	00	19	18		33	00	07	35
	60/P58	00	23	52	Melagani	34/3	00	00	73
	75	00	03	81		34/4	00	00	48
	77/1	00	16	51		35	00	00	48
	77/2	00	06	30		38	00	06	17
Keelagani	141/P1	00	27	04		37/4	00	00	94
	141/P34	00	03	66		37/3	00	01	96
	218	00	21	37		37/2	00	02	27
	184/3	00	00	09		37/5	00	03	21
	185/2	00	19	10		37/1	00	01	14
	184/1	00	23	45		39	00	07	36
	185/1	00	00	25		28/4	00	00	85
	193	00	26	90		28/5	00	04	85
	202	00	11	82		28/1	00	01	86
	203	00	02	08		40/2	00	00	07
	201	00	10	45		40/1	00	03	91
	199/4	00	01	74		28	00	00	07
	199/3	00	12	74		26/1	00	04	53
	199/2	00	00	24		26/2	—	—	—
	205/5	00	13	10		71/2	00	08	76
	205/1	00	11	15		71/1	00	03	98
	2	00	14	30		71/3	00	02	71
	4/4	00	05	64		73	00	14	84
	4/2	00	05	40		77/1	00	00	11
	4/3	00	00	09		77/33	00	16	10
	5	00	12	93		77/2	00	12	58
Keelagani contd.—	6/2	00	00	32	Melagani				

1	2	3	4	5	1	2	3	4	5
	78	00	14	76	Chandumanahalli	65/2	00	16	92
	79/1	00	01	05	(Contd.)	66	00	07	38
	81/2	00	01	89		67/2	00	01	54
	81/3	00	08	98		72	00	09	90
	81/4	00	18	21		37	00	02	80
	82/2	00	00	25		49	00	07	49
	83/2	00	14	13		50/2	00	07	43
	84	00	14	88		52/1	00	15	16
	85/1	00	03	37		52/2	00	06	64
	86	00	14	81		51	00	11	33
	87	00	12	73		2/1	00	00	12
	89	00	00	22		87/1	00	07	07
	88/1	00	17	51		87/2	00	11	25
	88/2	00	04	09		86/1	00	01	48
	149	00	18	91		86/2	00	16	21
	145/2	00	01	83		85	00	00	13
Padakasti	4/1	00	20	32	Ballaagrahara	76	00	17	83
	80	00	28	52		80/1	00	01	95
	82	00	07	66		80/10	00	37	28
	79	00	09	82		80/11	00	23	44
	78/1	00	34	61		78	00	28	05
	78/2	—	—	—		79	00	08	55
	77/1	00	09	24	Channapura	31/2	00	01	72
	77/2	—	—	—		31/1	00	09	18
	69/1	00	17	35		29/2	00	12	42
	69/2	00	22	69		29/1	00	10	74
	69/4	00	21	34		28	00	23	14
	70	00	09	72		133	00	07	94
	71	00	40	86		120/2P	00	00	23
Kannatha	42/1A	00	40	50		120/3	00	07	55
	42/1B	—	—	—		119/2	00	05	82
	42/2A	—	—	—		119/1	00	22	81
	42/2B	—	—	—		118	00	23	77
	40/2	00	11	16		105/1P	00	18	17
Kuruba	44	00	00	04		122	00	50	34
Chandumanahalli	318	00	13	50		106/10	00	07	28
	46/1	00	03	46		115/P1	00	51	70
	46/2	—	—	—		115/P2	00	30	53
	47/1	00	09	53		147	00	02	20
	43	00	21	60	Yedahalli	57/P1	00	00	77
	71	00	02	73		60/2B	00	23	95
	74	00	24	48		60/2A-P1	00	16	89
	93	00	09	00		60/2A-P2	—	—	—
	89	00	01	40		62/3P	00	07	55
	90	00	14	94		61	00	27	46
	91	00	07	74		67/P2	00	11	53
	64	00	03	24		67/P3	00	11	65
Kuruba	2/2	00	00	18					

1	2	3	4	5	1	2	3	4	5
Channapura	67/P4	00	22	45	Urakunte mitturu	10/5	00	03	39
Yedahalli (Contd.)	67/P5	00	00	47	(Contd.)	10/6	00	00	07
	87	00	02	12		9/1	00	16	97
	88	00	11	54		9/2	00	02	76
	106	00	08	72		8	00	13	43
	105/P1	00	06	43		7	00	04	32
	105/P2	—	—	—		5/1	00	19	81
	93	00	16	84		6	00	04	44
	86	00	12	37		350/2	00	06	61
	75	00	33	55		350/1	00	00	61
	76/4	00	06	40		351	00	04	94
Chittheri	66/P2	00	12	06		349	00	03	05
	88	00	18	86		329/1A	00	02	62
	65/P2	00	20	52		333	00	15	72
	63	00	00	13		334	00	02	00
	58	00	08	04		335	00	08	38
	57	00	23	78		337	00	06	98
	56/3	00	23	63		259/2	00	04	36
	56/1	00	17	38		259/5	00	00	12
	56/2	00	02	46		259/6	00	00	09
	80	00	10	02		259/7	00	03	78
	55/5	00	00	18		259/8	00	00	94
	55/6	00	03	36		258/4	00	02	62
	55/7	00	05	74		258/3	00	00	84
	55/8	00	05	37		261/3	00	00	66
	5	00	07	68		261/2	00	02	64
	53/1	00	26	96		261/1	00	04	17
	53/2	00	06	01		257/4	00	01	06
	53/4	00	00	40		257/5	00	00	78
	86	00	14	07		257/1	00	00	88
	40	00	06	45		220	00	00	09
Urakunte mitturu	47	00	07	04		263/1	00	02	43
	45/1	00	09	03		218	00	13	16
	45/2	00	05	44		217/2	00	05	72
	44	00	18	77		219	00	13	49
	35/1	00	13	80		223/2	00	03	16
	34/10	00	01	17		214	00	11	20
	34/15	00	11	72		212	00	03	45
	16/1P1	00	05	02		211/1	00	10	16
	16/1P2	00	08	32		211/2	00	00	20
	16/2	00	02	79		48/1	00	15	12
	16/3	00	03	15		48/2	00	23	76
	16/4	00	03	45					
	16/5	00	04	26	Avallamarakala-	42	00	06	65
	16/9	00	00	09	gatta	41/1	00	07	66
	12	00	12	42		41/2	00	00	07
	11/2	00	01	22		28/2	00	16	15
	11/3	00	05	37		39	00	06	97
						40	00	05	59

1	2	3	4	5	1	2	3	4	5
Avallamarakala-	34	00	23	09	Minijenahalli	32/2	00	02	25
Gatta (Contd.)	32/1	00	04	39	(Contd.)	32/3	00	03	43
	32/2	00	01	50		36/1	00	04	32
	32/3	00	02	66		36/2	00	01	03
	31/2	00	00	77		36/3	00	00	28
	31/3	00	00	61		35	00	04	34
	31/5	00	01	19		33/2	00	01	50
	31/4	00	01	33		39/7	00	00	28
	30	00	21	52		40	00	29	51
	3/2	00	03	10		81	00	11	04
	3/1	00	00	96		82/7	00	03	68
	4/2	00	02	59		83/26	00	03	21
	4/1	00	13	31		83/3	00	12	61
	23	00	21	25		83/2	00	10	33
	23/P5	00	03	06		84/6	00	07	25
	23/P6	00	06	36		87/1	00	05	08
	5	00	02	05		85/7	00	05	67
	6	00	00	92		85/6	00	03	83
	7	00	09	42		85/5	00	02	82
	21/1	00	08	77		85/4	00	0	74
	20/2	00	14	23		86/4	00	03	85
	20/1	00	02	59		86/3	00	04	48
	19/1	00	09	94		86/2	00	10	06
	19/2	00	07	80		86/1	00	10	21
	14/1	00	00	69		117	00	06	29
	16/2	00	10	96		116/2	00	08	16
	16/1	00	10	90		115	00	01	80
	15/2	00	08	05		128/2	00	32	50
	15/1	00	07	42		128/3	-	-	-
Minijenahalli	17/2	00	00	38		128/5	-	-	-
	18/1	00	13	25		129/1	00	00	50
	18/2	00	17	43		129/2	00	13	50
	18/3	00	24	89		130/P1	00	10	19
	19/2	00	00	92		130/P2	-	-	-
	20/2	00	01	07		134/1	00	00	55
	20/3	00	01	58		134/2	00	07	51
	20/4	00	01	42		134/3	00	09	44
	50/5	00	01	83		133/5	00	00	67
	20/7	00	01	90		133/1	00	07	64
	27/2	00	02	70		133/2P1	00	03	02
	27/3	00	02	59		133/2P2	-	-	-
	27/4	00	02	44		133/3	00	01	59
	27/5	00	03	73	Bandahalli	122	00	10	80
	27/6	00	05	60		4	00	27	36
	31/1	00	01	83		5	00	10	08
	31/2	00	03	01					
	31/3	00	03	78					
	32/1	00	02	02					

[F. No. R-25011/8/2007-O.R.-1]

S.K. CHITKARA, Under Secy.

नई दिल्ली, 24 अगस्त, 2007

**का.आ. 2461.**—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि तमिलनाडु राज्य में चेन्नै से कर्नाटक राज्य में बेंगलुरु तक पेट्रोलियम उत्पादों के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए;

और केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि उक्त भूमि में, जो इस अधिसूचना से संलग्न अनुसूची में वर्णित है और जिसमें पाइपलाइन बिछाए जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए;

अतः, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको उक्त अधिनियम की धारा 3 की उपधारा (1) के अधीन भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाने के संबंध में श्री आर. आर. जन्नु, सक्षम प्राधिकारी, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, पाइपलाइन डिवीजन, 719, भूतल फ्लोर, 4 क्रॉस, 7वां मेन, कल्याण नगर, 1 ब्लॉक, बेंगलुरु-560043 कर्नाटक को लिखित रूप में भेज सकेगा।

**अनुसूची**

तालुका : बंगारपेट	जिला : कोलार	राज्य : कर्नाटक		
गाँव का नाम	सर्वेक्षण सं./उप-खण्ड सं.	क्षेत्रफल हेक्टर एयर वर्ग मीटर		
1	2	3	4	5
जयमंगला	11/2	00	06	03
	11/3	00	03	02
	11/1	00	02	67
	11/11	00	06	76
	11/10	00	00	52
	9/4	00	08	64
	9/5	00	10	94
	7/3	00	00	80
	7/2	00	11	21
	7/1	00	04	27
	8	00	01	28
	5	00	14	19
	6/2	00	06	14
	6/1	00	00	49
	3/3	00	04	02
	1/8	00	01	06
	1/7	00	01	54
	1/6	00	01	60

1	2	3	4	5
जयमंगला-निरन्तर	1/3	00	02	05
	1/2	00	04	69
	1/1	00	05	91
	153/1	00	04	97
	153/2	00	05	20
	153/3	00	05	32
	153/4	00	04	14
	148/5	00	05	04
	148/4	00	04	46
	148/2	00	07	89
	147	00	11	52
	146	00	10	44
	145	00	06	64
	144	00	06	48
	143	00	07	26
	142	00	05	04
	139	00	00	09
	140	00	18	18
	138	00	08	10
	130	00	89	64
नीलकण्ठपुरा	45	00	97	20
	46	00	14	40
	56	00	11	16
	16	00	25	02
	52	00	09	95
	18	00	22	50
	17	00	00	20
वादंडाहल्लि	70	00	00	81
	69	00	09	81
	68	00	12	96
	67	00	14	40
	65	00	12	24
	15	00	20	88
	17	00	18	00
	124	00	20	16
	97	00	12	96
	54	00	08	28
	56	00	04	32
	57	00	02	34
	58	00	05	04
	51	00	01	80
	52	00	00	47
	60	00	07	09
	46	00	11	52
	102	00	16	52
कामण्डहल्ली	38	00	10	44
	39	00	06	84
	67	00	22	41
	69	00	04	24
	76	00	08	64
	68	00	09	72
	74	00	03	24
	40/4	00	00	30
	40/3	00	00	65

1	2	3	4	5	1	2	3	4	5
कामण्डहल्ली (निरन्तर)	40/2	00	02	50	मावहल्लि (निरन्तर)	46/1	00	04	68
	40/1	00	01	42		75	00	10	24
	41/4	00	01	40		128/1	00	35	27
	41/2	00	00	62		128/2	00	14	61
	41/1	00	01	46		129	00	15	35
	41/3	00	01	21	नायकरहल्लि	42	00	08	63
	42/पी2	00	07	62		41	00	02	10
	42/पी3	00	00	80		40/3	00	01	42
	55/3पी4	00	00	17		40/2	00	11	66
	55/3पी5	00	03	37		39/2	00	02	43
	55/4	00	02	15		38/1	00	00	59
	55/5	00	03	49		38/2	-	-	-
	57/2	00	00	25		38/3	-	-	-
	54/2	00	02	15		51/1	00	08	09
	54/1	00	06	05		51/2	-	-	-
	59	00	04	77		50	00	07	80
	53	00	07	06		26	00	10	73
	58/2	00	01	44		26/1	-	-	-
	52/1	00	06	95		26/2ए	-	-	-
	58/3पी1	00	04	95		25/3	00	07	13
	58/3पी2	00	05	09		25/2	00	05	25
	58/2पी1	00	00	76		25/1	00	01	91
	58/2पी2	-	-	-		56/1 ए	00	06	81
कंगानल्लुर	60	00	11	16		58	00	10	44
	62	00	23	94		57	00	04	77
	75	00	01	26		60	00	08	42
	63	00	24	12		62	00	09	75
	65	00	00	41		64	00	10	37
मावहल्लि	20	00	02	55		63/1	00	13	86
	19	00	09	82		65/4	00	04	64
	18/3बी	00	07	65		65/3	00	00	78
	18/3ए	00	05	25		66	00	08	82
	18/4	0	03	60		77/1	00	06	85
	18/5	00	03	96		78/3	00	14	56
	58/12	00	04	32		78/4	00	05	35
	58/5	00	00	06		79/3	00	07	45
	57/2	00	13	50		79/2	00	07	23
	57/3	-	-	-		79/1	00	06	73
	57/4	-	-	-		68/1	00	07	35
	57/5	-	-	-		68/2	00	06	60
	57/6	-	-	-		68/3पी1	00	08	43
	57/10	-	-	-		68/3पी2	00	09	32
	57/14	-	-	-		67/पी1	00	23	85
	57/20	-	-	-		67/पी16	00	07	84
	59	00	04	77		67/पी17	00	12	78
	58/1	00	01	44		67/पी18	00	12	61
	57/11	00	00	18		67/पी22	00	06	89
	57/18	00	03	25		67/पी23	00	07	02
	63	00	01	12		67/पी26	00	12	02
	64	00	04	33		67/पी29	00	31	11
	48/2	00	13	61		67/पी39	00	11	22
	48/1	00	08	75		67/पी43	00	14	09
	48/3	00	06	25		67/पी55	00	09	47
	47/3	00	04	36	वट्टकुटे	131/पी3	00	11	24

1	2	3	4	5	1	2	3	4	5
वटुकुंटे (निरन्तर)	131/पी5	00	08	54	मुगालाबेले (निरन्तर)	56/2	00	41	78
	131/पी6	00	10	15		9/1	00	03	02
बावरहल्लि	36/3	00	09	41		9/2	00	04	00
	14	02	52	63		10/1	00	05	18
	36/4	00	05	74		10/2	-	-	-
	36/5	00	05	34		8/4	00	04	26
	35/4	00	13	14		8/3	00	03	35
	35/5	00	01	81		8/2	00	00	05
	34/1	00	00	86		8/1	00	03	41
	34/2	00	02	61		7	00	04	48
	34/3	00	03	23		5/2	00	08	37
	20/4	00	10	64		16	00	09	38
	20/3	00	00	92		18	00	13	58
	19	00	11	58		133	00	14	26
	12/1	00	16	86		134/2	00	03	76
	11	00	26	66		160/6	00	00	23
	10/2	00	15	32		160/5	00	04	08
	9	00	20	19		160/4	00	00	91
हुडकुला	155	00	19	70		160/3	00	06	82
	156	00	21	98		160/2	00	00	37
	157	00	16	83		140/3	00	00	99
	158	00	24	65		140/2	00	15	39
	160	00	05	57		156/1	00	18	93
	160/पी 1	-	-	-		158/3	00	00	14
	160/पी2	-	-	-	माधमंगला	19/2	00	13	33
अनिगानाहल्लि	25/पी1	00	15	60		18	00	20	90
	24	00	01	85		17/1ए	00	00	93
	27	00	26	35		17/1बी	00	19	69
	30/पी1	00	11	66		17/2	-	-	-
	30/पी11	00	13	05		15/2	00	19	68
	31	00	46	98		15/1	00	00	25
	95	00	09	00		14	00	25	67
सिड्डानहल्लि	98/पी6P9	00	83	88	सूलकुंटे	3	00	20	88
	98/पी8	00	35	54		4	00	24	84
	98/पी10	00	33	35		6	00	02	88
	98/पी11	00	11	60		7	00	00	96
अक्षत्रगोल्लाहल्लि	10/पी1	00	14	55		109/2	00	05	76
	10/पी2	00	06	85		109/1	00	09	48
	10/पी3	00	12	68		14/2	00	00	13
	10/पी4	00	14	77		14/1	00	01	23
	9	00	11	09		15	00	06	03
	62/1	00	11	78		16	00	01	05
मुगालाबेले	72/पी33	00	10	52		104	00	08	74
	180	00	27	41		103	00	06	16
	67	00	23	11		96/4	00	01	91
	68/2	00	05	10		96/3	00	03	58
	66	00	12	56		96/2	00	02	18
	64/1	00	10	29		96/1	00	00	51
	64/2	00	00	51		97	00	16	95
	63/1	00	00	12		25/2	00	20	15
	63/2	00	06	24		25/3	00	05	73
	63/3	00	07	40		24/1	00	28	27
	58	00	25	64		21/2पी	00	14	82
	59	00	15	83		21/3पी	00	10	30

1	2	3	4	5	1	2	3	4	5
सूलकुंटे (निरन्तर)	21/4पी	00	35	45	Jayamangala Cont.	7/1	00	04	27
	21	00	31	90		8	00	01	28
	153	00	13	88		5	00	14	19
	159	00	35	57		6/2	00	06	14
	129	00	66	66		6/1	00	00	49
	126	00	19	74		3/3	00	04	02
	125	00	00	13		1/8	00	01	06
	125/1	-	-	-		1/7	00	01	54
	125/2	-	-	-		1/6	00	01	60
[फा. सं. आर-25011/8/2007-ओ.आर.-1]						1/3	00	02	05
एस. के. चिटकारा, अवर सचिव						1/2	00	04	69
New Delhi, the 24th August, 2007						1/1	00	05	91
<b>S.O. 2461—</b> Whereas, it appears to the Central						153/1	00	04	97
Government that it is necessary in the public interest that						153/2	00	05	20
for the transportation of petroleum products from Chennai						153/3	00	05	32
in the State of Tamilnadu to Bangalore in the State of						153/4	00	04	14
Karnataka, a pipeline should be laid by the Indian Oil						148/5	00	05	04
Corporation Limited;						148/4	00	04	46
And whereas it appears to the Central Government						148/2	00	07	89
that for the purpose of laying the said pipeline, it is						147	00	11	52
necessary to acquire the right of user in the land under						146	00	10	44
which the said pipeline is proposed to be laid which is						145	00	06	64
described in the Schedule annexed to this notification;						144	00	06	48
Now, therefore, in exercise of the powers conferred						143	00	07	26
by sub-section (i) of Section 3 of the Petroleum and						142	00	05	04
Minerals Pipelines (Acquisition of Right of User in Land)						139	00	00	09
Act, 1962 (50 of 1962), the Central Government hereby						140	00	18	18
declares its intention to acquire the right of user therein;						138	00	08	10
Any person interested in the land described in the						130	00	89	64
said Schedule may, within twenty-one days from the date					Neelakanthpura	45	00	97	20
on which the copies of this notification issued under sub-						46	00	14	40
section (1) of Section 3 of the said, Act, as published in the						56	00	11	16
Gazette of India, are made available to the general public,						16	00	25	02
object in writing to the acquisition of the right of user						52	00	09	95
therein or laying of the pipeline under the land to Shri R.R.						18	00	22	50
Jannu, Competent Authority, Indian Oil Corporation						17	00	00	20
Limited, Pipelines Division, 719 Ground Floor, 4th Cross,					Vadandahalli	70	00	00	81
7th Main, Kalyana Nagar, 1st Block, Bangalore-560043						69	00	09	81
(Karnataka).						68	00	12	96
<b>SCHEDULE</b>						67	00	14	40
Taluka : Bangarpet District : Kolar State : Karnataka						65	00	12	24
Name of village	Survey No./ Sub-division No.	Area							
		Hectare	Are	Sq mtr.					
1	2	3	4	5					
Jayamangala	11/2	00	06	03		15	00	20	88
	11/3	00	03	02		17	00	18	00
	11/1	00	02	67		124	00	20	16
	11/11	00	06	76		97	00	12	96
	11/10	00	00	52		54	00	08	28
	9/4	00	08	64		56	00	04	32
	9/5	00	10	94		57	00	02	34
	7/3	00	00	80		58	00	05	04
	7/2	00	11	21		51	00	01	80
						52	00	00	47
						60	00	07	09
						46	00	11	52
						102	00	16	52

1	2	3	4	5	1	2	3	4	5
Kamandahalli	38	00	10	44	Mavahalli (contd.)	58/1	00	01	44
	39	00	06	84		57/11	00	00	18
	67	00	22	41		57/18	00	03	25
	69	00	04	24		63	00	01	12
	76	00	08	64		64	00	04	33
	68	00	09	72		48/2	00	13	61
	74	00	03	24		48/1	00	08	75
	40/4	00	00	30		48/3	00	06	25
	40/3	00	00	65		47/3	00	04	36
	40/2	00	02	50		46/1	00	04	68
	40/1	00	01	42		75	00	10	24
	41/4	00	01	40		128/1	00	35	27
	41/2	00	00	62		128/2	00	14	61
	41/1	00	01	46		129	00	15	35
	41/3	00	01	21	Nayakarhalli	42	00	08	63
	42/P2	00	07	62		41	00	02	10
	42/P3	00	00	80		40/3	00	01	42
	55/3P4	00	00	17		40/2	00	11	66
	55/3P5	00	03	37		39/2	00	02	43
	55/4	00	02	15		38/1	00	00	59
	55/5	00	03	49		38/2	-	-	-
	57/2	00	00	25		38/3	-	-	-
	54/2	00	02	15		51/1	00	08	09
	54/1	00	06	05		51/2	-	-	-
	59	00	04	77		50	00	07	80
	53	00	07	06		26	00	10	73
	58/2	00	01	44		26/1	-	-	-
	52/1	00	06	95		26/2A	-	-	-
	58/3P1	00	04	95		25/3	00	07	13
	58/3P2	00	05	09		25/2	00	05	25
	58/2P1	00	00	76		25/1	00	01	91
	58/2P2	-	-	-		56/1 A	00	06	81
Kanganallur	60	00	11	16		58	00	10	44
	62	00	23	94		57	00	04	77
	75	00	01	26		60	00	08	42
	63	00	24	12		62	00	09	75
	65	00	00	41		64	00	10	37
Mavahalli	20	00	02	55		63/1	00	13	86
	19	00	09	82		65/4	00	04	64
	18/3B	00	07	65		65/3	00	00	78
	18/3A	00	05	25		66	00	08	82
	18/4	00	03	60		77/1	00	06	85
	18/5	00	03	96		78/3	00	14	56
	58/12	00	04	32		78/4	00	05	35
	58/5	00	00	06		79/3	00	07	45
	57/27	00	13	50		79/2	00	07	23
	57/3	-	-	-		79/1	00	06	73
	57/4	-	-	-		68/1	00	07	35
	57/5	-	-	-		68/2	00	06	60
	57/6	-	-	-		68/3P1	00	08	43
	57/10	-	-	-		68/3P2	00	09	32
	57/14	-	-	-		67/P1	00	23	85
	57/20	-	-	-		67/P16	00	07	84
	59	00	04	77		67/P17	00	12	78

1	2	3	4	5	1	2	3	4	5
Nayakarhalli (Contd.)	67/P18	00	12	61	Mugalabele	68/2	00	05	10
	67/P22	00	06	89	(Contd.)	66	00	12	56
	67/P23	00	07	02		64/1	00	10	29
	67/P26	00	12	02		64/2	00	00	51
	67/P29	00	31	11		63/1	00	00	12
	67/P39	00	11	22		63/2	00	06	24
	67/P43	00	14	09		63/3	00	07	40
	67/P55	00	09	47		58	00	25	64
Vatrakunte	131/P3	00	11	24		59	00	15	83
	131/P5	00	08	54		56/2	00	41	78
	131/P6	00	10	15		9/1	00	03	02
Bavrahalli	36/3	00	09	41		9/2	00	04	00
	14	02	52	63		10/1	00	05	18
	36/4	00	05	74		10/2	-	-	-
	36/5	00	05	34		8/4	00	04	26
	35/4	00	13	14		8/3	00	03	35
	35/5	00	01	81		8/2	00	00	05
	34/1	00	00	86		8/1	00	03	41
	34/2	00	02	61		7	00	04	48
	34/3	00	03	23		5/2	00	08	37
	20/4	00	10	64		16	00	09	38
	20/3	00	00	92		18	00	13	58
	19	00	11	58		133	00	14	26
	12/1	00	16	86		134/2	00	03	76
	11	00	26	66		160/6	00	00	23
	10/2	00	15	32		160/5	00	04	08
	9	00	20	19		160/4	00	00	91
Hudakula	155	00	19	70		160/3	00	06	82
	156	00	21	98		160/2	00	00	37
	157	00	16	83		140/3	00	00	99
	158	00	24	65		140/2	00	15	39
	160	00	05	57		156/1	00	18	93
	160/P 1	-	-	-		158/3	00	00	14
	160/P2	-	-	-	Madhamangala	19/2	00	13	33
Aniganahalli	25/P1	00	15	60		18	00	20	90
	24	00	01	85		17/1A	00	00	93
	27	00	26	35		17/1B	00	19	69
	30/P1	00	11	66		17/2	-	-	-
	30/P11	00	13	05		15/2	00	19	68
	31	00	46	98		15/1	00	00	25
	95	00	09	00		14	00	25	67
Siddanahalli	98/P6P9	00	83	88	Sulakunte	3	00	20	88
	98/P8	00	35	54		4	00	24	84
	98/P 10	00	33	35		6	00	02	88
	98/P 11	00	11	60		7	00	00	96
Akshantra-	10/P1	00	14	55		109/2	00	05	76
gollahalli	10/P2	00	06	85		109/1	00	09	48
	10/P3	00	12	68		14/2	00	00	13
	10/P4	00	14	77		14/1	00	01	23
	9	00	11	09		15	00	06	03
	62/1	00	11	78		16	00	01	05
Mugalabele	72/P33	00	10	52		104	00	08	74
	180	00	27	41		103	00	06	16
	67	00	23	11		96/4	00	01	91

1	2	3	4	5	1	2	3	4	5
Sulakunte (Contd.)	96/3	00	03	58	वडागरे (जारी)	1	00	13	56
	96/2	00	02	18		2	00	22	55
	96/1	00	00	51		3	00	29	28
	97	00	16	95		130	00	18	91
	25/2	00	20	15		133	00	16	11
	25/3	00	05	73	स्वामीगला गोल्लाहल्लि	44/पी11	00	07	67
	24/1	00	28	27		39	00	47	74
	21/2P	00	14	82		38	00	04	82
	21/3P	00	10	30		44/पी35	00	03	91
	21/4P	00	35	45		44/पी2	00	30	66
	21	00	31	90		40	00	03	28
	153	00	13	88		44/पी14	00	97	01
	159	00	35	57		44/पी25	00	33	76
	129	00	66	66		44/पी19	00	42	24
	126	00	19	74	अग्रहरा सोमरसन हल्लि	157	00	08	10
	125	00	00	13		156	00	13	32
	125/1	-	-	-		158	00	19	26
	125/2	-	-	-		155	00	13	68
[F.No. R-25011/8/2007-O.R-1]						154	00	04	86
S. K. CHITKARA, Under Secy.						153	00	01	44
नई दिल्ली, 24 अगस्त, 2007					पटना	48	00	25	56
का.आ. 2462.—केन्द्रीय सरकार को लोकहित में यह आवश्यक						33	00	13	50
प्रतीत होता है कि तमिलनाडु राज्य में चेन्नै से कर्नाटक राज्य में						32	00	03	24
बेंगलुरु तक पेट्रोलियम उत्पादों के परिवहन के लिए इंडियन ऑयल						34	00	21	78
कॉर्पोरेशन लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;						35	00	10	62
और, केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के						42	00	22	74
लिए यह आवश्यक प्रतीत होता है कि उक्त भूमि में, जो इस अधिसूचना						40	00	03	18
से संलग्न अनुसूची में वर्णित है और जिसमें पाइपलाइन बिछाए जाने						41	00	06	48
का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए;						144	00	18	25
अतः, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन						142	00	00	99
(भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962						143	00	00	20
का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग						145	00	10	98
करते हुए, उक्त भूमि में उपयोग के अधिकार का अर्जन करने के						140	00	24	48
अपने आशय की घोषणा करती है;						139	00	07	92
कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है,						137	00	03	84
उस तारीख से जिसको उक्त अधिनियम की धारा 3 की उपधारा (1)						135	00	06	48
के अधीन भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियाँ						134	00	04	32
साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर, भूमि						131	00	08	28
के नीचे पाइपलाइन बिछाने के संबंध में, श्री आर. आर. जन्तु, सक्षम						132	00	14	76
प्राधिकारी, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, पाइपलाइन डिविजन,						128	00	12	24
719, भूतल फ्लोर, 4 क्रास, 7 मेन, कल्याण नगर, 1 ब्लाक,						127	00	02	88
बेंगलुरु-560043 कर्नाटक को लिखित रूप में भेज सकेगा।						129	00	11	52
अनुसूची					मीठमल्लहल्ली	36	00	01	44
तालुका : कोलार	जिला : कोलार	राज्य : कर्नाटक				37	00	00	90
गाँव का नाम	सर्वेक्षण सं./उप- खण्ड सं.	क्षेत्रफल हेक्टर एयर वर्ग मीटर				34	00	19	26
						33	00	22	68
						20	00	27	00
						21	00	07	15
						15	00	10	08
						3	00	25	20
						2	00	06	12
						75	00	05	04
						5	00	05	04
						72	00	00	90
वडागरे	38	00	02	88					
	74	00	20	76					

1	2	3	4	5
मीठमल्लहल्ली (जारी)	77	00	09	36
	76	00	03	40
	79	00	05	40
	80	00	10	80
	84	00	12	60
	81	00	16	92
	53	00	88	80

[फा. सं. आर-25011/8/2007-ओ.आर.-1]

एस. के. चिटकारा, अवर सचिव

New Delhi, the 24th August, 2007

**S.O. 2462.**—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of petroleum products from Chennai in the State of Tamilnadu to Bangalore in the State of Karnataka, a pipeline should be laid by the Indian Oil Corporation Limited;

And whereas it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (i) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may, within twenty-one days from the date on which the copies of this notification issued under sub-section (1) of Section 3 of the said Act, as published in the Gazette of India, are made available to the general public, object in writing to the acquisition of the right of user therein or laying of the pipeline under the land to Shri R.R Jannu, Competent Authority, Indian Oil Corporation Limited, Pipelines Division, 719 Ground Floor, 4th Cross, 7th Main, Kalyana Nagar, 1st Block, Bangalore-560043. (Karnataka)

**SCHEDULE**

Taluka : Kolar District : Kolar State : Karnataka

Name of the village	Survey No./ Sub-division No.	Area		
		Hectare	Are	Sq mtr.
1	2	3	4	5
Vadagere	38	00	02	88
	74	00	20	76
	1	00	13	56
	2	00	22	55
	3	00	29	28
	130	00	18	91
	133	00	16	11
Swamigala	44/P11	00	07	67
Gollahalli	39	00	47	74
	38	00	04	82
	44/P35	00	03	91

1	2	3	4	5
Swamigala	44/P2	00	30	66
Gollahalli	40	00	03	28
	44/P14	00	97	01
	44/P25	00	33	76
	44/P19	00	42	24
Agarhara	157	00	08	10
Somrasana Halli	156	00	13	32
	158	00	19	26
	155	00	13	68
	154	00	04	86
	153	00	01	44
Patna	48	00	25	56
	33	00	13	50
	32	00	03	24
	34	00	21	78
	35	00	10	62
	42	00	22	74
	40	00	03	18
	41	00	06	48
	144	00	18	25
	142	00	00	99
	143	00	00	20
	145	00	10	98
	140	00	24	48
	139	00	07	92
Mittamanahalli	137	00	03	84
	135	00	06	48
	134	00	04	32
	131	00	08	28
	132	00	14	76
	128	00	12	24
	127	00	02	88
	129	00	11	52
	36	00	01	44
	37	00	00	90
	34	00	19	26
	33	00	22	68
	20	00	27	00
	21	00	07	15
	15	00	10	08
	3	00	25	20
	2	00	06	12
	75	00	05	04
	5	00	05	04
	72	00	00	90
	77	00	09	36
	76	00	03	40
	79	00	05	40
	80	00	10	80
	84	00	12	60
	81	00	16	92
	53	00	88	80

[F. No. R-25011/8/2007-O.R.-1]

S. K. CHITKARA, Under Secy.

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2463.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि तमिलनाडु राज्य में चेन्नै से कर्नाटक राज्य में बेंगलुरु तक पेट्रोलियम उत्पादों के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए;

और केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि उक्त भूमि में, जो इस अधिसूचना से संलग्न अनुसूची में वर्णित है और जिसमें पाइपलाइन बिछाए जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए ;

अतः, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको उक्त अधिनियम की धारा 3 की उपधारा (1) के अधीन भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाने के संबंध में, श्री आर. आर. जन्तु, सक्षम प्राधिकारी, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, पाइपलाइन डीविजन, 719 भूतल फ्लोर, 4 क्रॉस, 7 मेन, कल्याण नगर, 1 ब्लॉक, बेंगलुरु-560043, कर्नाटक को लिखित रूप में भेज सकेगा।

## अनुसूची

तालूका : मालुर जिला : कोलार राज्य : कर्नाटक

गाँव का नाम	सर्वेक्षण सं./ उप-खण्ड सं.	क्षेत्रफल हेक्टर	एयर वर्ग मीटर	
1	2	3	4	5
करडागुर्की	30/पी15	00	52	58
	30/पी22	00	26	44
	30/पी24	00	47	21
कुंटानहल्लि	68	00	15	42
	68/पी1	00	27	85
	56	00	00	44
	59	00	41	39
	58	00	16	38
	61	00	00	19
	62	00	08	04
	63	00	01	30
	64/3	00	17	66
	64/2	00	02	07
	47	00	04	69
	46	00	01	68
	45/2	00	12	41
	45/3	00	09	86
	52/पी1	00	06	74
नक्कनहल्लि	37/पी3	00	43	74

1	2	3	4	5
नक्कनहल्लि (जारी)	37/पी4	00	33	29
	37/पी5	00	20	48
	37/पी6	00	13	03
	37/पी11	00	24	95
कारगुट्टा	16	00	23	40
	16/बी	00	09	49
	16/पी7	00	34	48
	16/पी8	00	13	49
	16/पी9	00	33	37
	45	00	15	68
	18	00	02	23
	9	00	24	23
	10/2	00	02	88
	8/3	00	05	76
	8/2	00	09	90
	8/1	00	10	44
	7	00	24	48
	46	00	00	59
निधरमंगला	34	00	50	40
	3	00	04	68
	35	00	12	08
	36	00	07	07
	50/4	00	00	99
	50/3	00	02	57
	50/2	00	11	08
	50/7	00	00	36
	50/6	00	00	32
	50/5ए	00	06	35
	50/5बी	00	06	24
	48/4	00	05	59
	51	00	02	46
	19	00	06	44
	18	00	00	81
	20	00	03	82
	21	00	18	25
	22	00	12	16
	23	00	20	29
	24/2	00	02	94
	205	00	00	10
बावनहल्लि	47	00	01	58
	47/पी1	00	07	13
	47/पी2	00	14	19
	47/पी12	00	15	19
	47/पी13	00	11	11
	47/पी14	00	15	71
	47/पी34	00	22	32
	47/पी35	00	06	28
	32/2	00	08	75
	31/5	00	04	02
	31/6	00	04	87
	31/8	00	07	45
	31/3	00	03	02
	31/4	00	02	82
	17/11	00	05	11

1	2	3	4	5	1	2	3	4	5
बावनहल्लि (जारी)	17/10	00	00	09	वडगनहल्लि (जारी)	74/2	00	05	30
	17/1	00	03	23		74/1	00	15	65
	17/2	00	07	33		75/2	00	26	94
	16/3	00	06	81	चिक्कासिवारा	37	00	30	40
	16/2	00	07	70		68	00	00	78
	20/1	00	05	77		52/1	00	31	90
	20/2	00	04	73		54	00	05	72
	20/3	00	26	10		51	00	25	87
	21	00	14	68		50	00	04	57
कडसनहल्लि	10/3	00	25	21		49/1	00	18	14
	10/4	00	00	38		49/2	00	14	21
	10/2	00	04	71		48/2	00	11	33
	10/1	00	04	95		47/1	00	16	77
	25/ए	00	09	86	धाड्डाकडथुरु	45/2	00	06	48
	36/2	00	24	34		46/1	00	32	10
	39/1	00	14	64		43	00	12	57
	39/2	00	03	69		49/2	00	10	20
	40	00	13	46		49/1-ए	00	05	85
	41	00	11	32		49/1-बो	00	03	75
	53/2	00	15	18		138/2	00	05	01
	53/1	00	23	93		138/1	00	06	30
	52	00	01	57		50/2	00	01	22
	51	00	13	48		51	00	21	57
	50	00	40	79		60/1 }	00	11	87
	49	00	00	73		60/2	-	-	-
पुरमाकनहल्लि	5/पी 5	00	07	40		70/6	00	17	18
	5/पी 6	00	18	12		70/7ए	00	06	51
	5/पी 9	00	03	95		70/5	00	10	73
	5/पी 10	00	28	36		70/2	00	06	69
	7/1	00	04	65		70/1	00	05	61
	9/3	00	10	41		73	00	41	79
	9/4	00	14	29		73/पी5	00	03	84
	9/2	00	09	01		151	00	19	81
	9/1	00	09	62		71/6	00	10	51
	43/4	00	18	36		71/5	00	17	72
	15/9	00	05	26		71/4	00	05	41
	15/8	00	00	09		71/3	00	05	13
	14	00	06	65		71/1	00	09	39
	16/5	00	05	27		172	00	20	17
	16/3	00	04	93		163	00	00	09
	16/2	00	07	64		173	00	18	12
	16/1	00	06	06		174	00	21	52
	22	00	02	14		160'	00	22	15
	21	00	18	44		159	00	05	95
	25	00	08	37		169	00	30	06
	26/2	00	06	64		168	00	03	67
दोड्डाशिवारा	42	00	00	70	नाचोहल्लि	69/पी1	00	54	24
वडगनहल्लि	30	00	16	16		69/पी2	00	51	00
	31/1	00	10	48		64/2	00	00	68
	31/2	00	09	24		64/1	00	22	68
	34	00	30	23		69/पी7	00	45	30
	35	00	00	09		69/पी13	00	19	63
	73/2	00	17	24		72	00	00	22
	73/1	00	17	21		77/1	00	23	21

1	2	3	4	5	1	2	3	4	5
नाचोहल्लि (जारी)	76	00	19	36	माडिवाला (जारी)	174	00	05	94
	75/2	00	03	37		175	00	13	50
	75/1	00	11	48		66	00	00	54
	74	00	18	46		65	00	07	78
लिंगापुरा	49/पी4	00	30	29		63/1	00	01	12
	28	00	47	75		64/1	00	01	68
	32	00	31	45		64/2	00	06	30
हारोहल्लि	11/पी1	00	18	72		64/3	00	09	80
	11/पी2	00	12	42	चोकंडहल्लि	170/2	00	02	16
	11/पी3	00	00	68		170/1	00	15	12
	12/1	00	05	90		164	00	24	00
	12/2	00	16	66		169/3	00	00	09
	21/2	00	00	70		165/1	00	28	03
	21/3	00	12	25		165/2	00	03	29
	21/4	00	02	60		166/2	00	11	50
	20/2	00	11	66		115/2	00	10	43
	20/1	00	12	14		115/1	00	18	54
	19/3	00	08	13		119/3	00	12	20
	19/2	00	07	43		120/2	00	06	38
	19/1	00	07	59		120/1	00	05	60
	34	00	39	34		121	00	00	18
	36	00	00	09		128/2	00	03	33
	33/2सी	00	27	88		126/3	00	08	28
	33/2बी2	00	00	28		126/2	00	14	99
	33/2ए	00	18	63		126/1	00	12	95
माडिवाला	151	00	08	29		127	00	05	07
	154/1	00	05	85		132/2	00	16	15
	155/1	00	00	17		135/1	00	12	77
	67	00	11	50		139/3	00	05	12
	68	00	02	20		139/2	00	04	80
	164/2	00	03	35		139/1	00	10	43
	164/1	00	16	19		140	00	01	82
	164/3	00	00	30	हनुमानायकहल्लि	32	00	70	45
	166/2	00	06	67		32/पी1	-	-	-
	61	00	08	75	याशवन्तपुरा	18	00	06	51
	16	00	23	68		98	00	19	15
	12/5ए	00	01	80		20/5	00	06	54
	12/4	00	05	45		20/4	00	05	10
	12/3	00	06	22		20/3	00	05	43
	12/2	00	04	77		20/2पी1	00	05	55
	12/1	00	20	30		20/2पी2	-	-	-
	11	00	09	58		20/1ए	00	05	09
	10	00	10	97		20/1 बी	-	-	-
	8/4	00	23	41		19/6पी2	00	05	10
	8/3	00	07	11		19/4	00	04	80
	167	00	10	05		19/7	00	04	72
	166/1	00	00	09		19/2	00	04	25
	168	00	05	59		19/1	00	03	63
	169	00	06	43		100/1	00	01	44
	171/2	00	03	60		105	00	16	56
	171/3	00	01	80		21	00	11	52
	173/1	00	00	24		108	00	14	40
	173/2	00	01	84		22	00	41	04
	173/3	00	06	05		23/1	00	08	64

1	2	3	4	5
हनुमानायकहल्लि	23/2	00	10	80
याशवन्तपुरा (जारी)	26/4	00	03	42
	26/5	00	05	22
	25/2बी	00	06	30
	25/2ए	00	05	22
	25/1	00	00	60
	3	00	07	92
	4/3	00	20	52
	5	00	17	28
	84	00	12	96
	85/2	00	11	25
	85/1	00	13	55
	82/3	00	06	66
	82/4-पौ1	00	01	12
	82/4-पौ2	00	08	59
	82/4-पौ3	00	06	43
	80	00	05	71
	81/3	00	07	83
	79	00	24	27
थिम्मापुरा	10	00	03	93
	11	00	25	22
	3	00	51	46
	2	00	16	46
देवरगोल्लहल्ली	23	00	01	00
	25	00	27	15
	24	00	25	81
आनेपुर	77	00	02	84
	70	00	01	42
	78	00	00	85

[फाइल सं. आर-25011/8/2007-ओ.आर-1]

एस. के. चिटकारा, अवर सचिव

New Delhi, the 24th August, 2007

**S.O. 2463.**—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of petroleum products from Chennai in the State of Tamilnadu to Bangalore in the State of Karnataka, a pipeline should be laid by the Indian Oil Corporation Limited;

And whereas it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (i) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may, within twenty-one days from the date on which the copies of this notification issued under sub-section (1) of Section 3 of the said Act, as published in the Gazette of India, are made available to the general public, object in writing to the acquisition of the right of user

therein or laying of the pipeline under the land to Shri R.R Jannu, Competent Authority, Indian Oil Corporation Limited, Pipelines Division, 719 Ground Floor, 4th Cross, 7th Main, Kalyana Nagar, 1st Block, Bangalore-560043 (Karnataka).

**SCHEDULE**

Taluka : Malur		District : Kolar		State : Karnataka	
Name of the village	Survey No./ Sub-division No.	Area			Sq mtr.
		Hectare	Are		
1	2	3	4	5	
Karadagurky	30/P15	00	52	58	
	30/P22	00	26	44	
	30/P24	00	47	21	
	68	00	15	42	
Kuntanahalli	68/P1	00	27	85	
	56	00	00	44	
	59	00	41	39	
	58	00	16	38	
Nakkanahalli	61	00	00	19	
	62	00	08	04	
	63	00	01	30	
	64/3	00	17	66	
	64/2	00	02	07	
	47	00	04	69	
	46	00	01	68	
	45/2	00	12	41	
	45/3	00	09	86	
	52/P1	00	06	74	
	37/P3	00	43	74	
	37/P4	00	33	29	
Karangutta	37/P5	00	20	48	
	37/P6	00	13	03	
	37/P11	00	24	95	
	16	00	23	40	
	16B	00	09	49	
	16/P7	00	34	48	
	16/P8	00	13	49	
	16/P9	00	33	37	
	45	00	15	68	
	18	00	02	23	
	9	00	24	23	
	10/2	00	02	88	
Nidharamangala	8/3	00	05	76	
	8/2	00	09	90	
	8/1	00	10	44	
	7	00	24	48	
	46	00	00	59	
	34	00	50	40	
	3	00	04	68	
	35	00	12	08	
	36	00	07	07	
	50/4	00	00	99	
	50/3	00	02	57	
	50/2	00	11	08	
Nidharamangala	50/7	00	00	36	
	50/6	00	00	32	
	50/5A	00	06	35	
	50/5B	00	06	24	

1	2	3	4	5	1	2	3	4	5
Nidharamangala (Contd.)	48/4	00	05	59	Puramakanhalli (Contd.)	9/4	00	14	29
	51	00	02	46		9/2	00	09	01
	19	00	06	44		9/1	00	09	62
	18	00	00	81		43/4	00	18	36
	20	00	03	82		15/9	00	05	26
	21	00	18	25		15/8	00	00	09
	22	00	12	16		14	00	06	65
	23	00	20	29		16/5	00	05	27
	24/2	00	02	94		16/3	00	04	93
	205	00	00	10		16/2	00	07	64
Bavnahalli	47	00	01	58		16/1	00	06	06
	47/P1	00	07	13		22	00	02	14
	47/P2	00	14	19		21	00	18	44
	47/P12	00	15	19		25	00	08	37
	47/P13	00	11	11		26/2	00	06	64
	47/P14	00	15	71		42	00	00	70
	47/P34	00	22	32	Doddashivara	30	00	16	16
	47/P35	00	06	28	Vadaganahalli	31/1	00	10	48
	32/2	00	08	75		31/2	00	09	24
	31/5	00	04	02		34	00	30	23
	31/6	00	04	87		35	00	00	09
	31/8	00	07	45		73/2	00	17	24
	31/3	00	03	02		73/1	00	17	21
	31/4	00	02	82		74/2	00	05	30
	17/11	00	05	11		74/1	00	15	65
	17/10	00	00	09		75/2	00	26	94
	17/1	00	03	23	Chikkashivara	37	00	30	40
	17/2	00	07	33		68	00	00	78
	16/3	00	06	81		52/1	00	31	90
	16/2	00	07	70		54	00	05	72
	20/1	00	05	77		51	00	25	87
	20/2	00	04	73		50	00	04	57
	20/3	00	26	10		49/1	00	18	14
	21	00	14	68		49/2	00	14	21
Kadasannahalli	10/3	00	25	21		48/2	00	11	33
	10/4	00	00	38		47/1	00	16	77
	10/2	00	04	71	Dhadda Kadathuru	45/2	00	06	48
	10/1	00	04	95		46/1	00	32	10
	25/A	00	09	86		43	00	12	57
	36/2	00	24	34		49/2	00	10	20
	39/1	00	14	64		49/1-A	00	05	85
	39/2	00	03	69		49/1-B	00	03	75
	40	00	13	46		138/2	00	05	01
	41	00	11	32		138/1	00	06	30
	53/2	00	15	18		50/2	00	01	22
	53/1	00	23	93		51	00	21	57
	52	00	01	57		60/1	00	11	87
	51	00	13	48		60/2	-	-	-
	50	00	40	79		70/6	00	17	18
	49	00	00	73		70/7A	00	06	51
Puramakanhalli	5/P5	00	07	40		70/5	00	10	73
	5/P6	00	18	12		70/2	00	06	69
	5/P9	00	03	95		70/1	00	05	61
	5/P10	00	28	36		73	00	41	79
	7/1	00	04	65					
	9/3	00	10	41					

1	2	3	4	5	1	2	3	4	5	
Dhadda Kadathuru (Contd.)	73/P5	00	03	84	Madivala (Contd.)	164/1	00	16	19	
	151	00	19	81		164/3	00	00	30	
	71/6	00	10	51		166/2	00	06	67	
	71/5	00	17	72		61	00	08	75	
	71/4	00	05	41		16	00	23	68	
	71/3	00	05	13		12/5A	00	01	80	
	71/1	00	09	39		12/4	00	05	45	
	172	00	20	17		12/3	00	06	22	
	163	00	00	09		12/2	00	04	77	
	173	00	18	12		12/1	00	20	30	
	174	00	21	52		11	00	09	58	
	160'	00	22	15		10	00	10	97	
	159	00	05	95		8/4	00	23	41	
	169	00	30	06		8/3	00	07	11	
	168	00	03	67		167	00	10	05	
	Nachohalli	69/P1	00	54		24	166/1	00	00	09
		69/P2	00	51		00	168	00	05	59
		64/2	00	00		68	169	00	06	43
		64/1	00	22		68	171/2	00	03	60
69/P7		00	45	30	171/3	00	01	80		
69/P13		00	19	63	173/1	00	00	24		
72		00	00	22	173/2	00	01	84		
77/1		00	23	21	173/3	00	06	05		
76		00	19	36	174	00	05	94		
75/2		00	03	37	175	00	13	50		
75/1		00	11	48	66	00	00	54		
74		00	18	46	65	00	07	78		
Lingapura		49/P4	00	30	29	63/1	00	01	12	
		28	00	47	75	64/1	00	01	68	
		32	00	31	45	64/2	00	06	30	
		Harohalli	11/P1	00	18	72	64/3	00	09	80
11/P2			00	12	42	Chokandahalli	170/2	00	02	16
11/P3			00	00	68		170/1	00	15	12
12/1			00	05	90		164	00	24	00
12/2	00		16	66	169/3		00	00	09	
21/2	00		00	70	165/1		00	28	03	
21/3	00		12	25	165/2		00	03	29	
21/4	00		02	60	166/2		00	11	50	
20/2	00		11	66	115/2		00	10	43	
20/1	00		12	14	115/1		00	18	54	
19/3	00		08	13	119/3		00	12	20	
19/2	00		07	43	120/2		00	06	38	
19/1	00		07	59	120/1		00	05	60	
34	00		39	34	121		00	00	18	
36	00		00	09	128/2		00	03	33	
33/2C	00		27	88	126/3		00	08	28	
33/2B2	00		00	28	126/2		00	14	99	
33/2A	00		18	63	126/1		00	12	95	
Madivala	151		00	08	29		127	00	05	07
	154/1	00	05	85	132/2		00	16	15	
	155/1	00	00	17	135/1	00	12	77		
	67	00	11	50	139/3	00	05	12		
	68	00	02	20	139/2	00	04	80		
	164/2	00	03	35	139/1	00	10	43		
					140	00	01	82		

1	2	3	4	5
Hanumanayakahalli	32	00	70	45
	32/P1	-	-	-
Yeshwanthapura	18	00	06	51
	98	00	19	15
	20/5	00	06	54
	20/4	00	05	10
	20/3	00	05	43
	20/2P1	00	05	55
	20/2P2	-	-	-
	20/1A	00	05	09
	20/1B	-	-	-
	19/6P2	00	05	10
	19/4	00	04	80
	19/7	00	04	72
	19/2	00	04	25
	19/1	00	03	63
	100/1	00	01	44
	105	00	16	56
	21	00	11	52
	108	00	14	40
	22	00	41	04
	23/1	00	08	64
	23/2	00	10	80
	26/4	00	03	42
	26/5	00	05	22
	25/2B	00	06	30
	25/2A	00	05	22
	25/1	00	00	60
	3	00	07	92
	4/3	00	20	52
	5	00	17	28
	84	00	12	96
	85/2	00	11	25
	85/1	00	13	55
	82/3	00	06	66
	82/4-P1	00	01	12
	82/4-P2	00	08	59
	82/4-P3	00	06	43
	80	00	05	71
	81/3	00	07	83
	79	00	24	27
Thimmapura	10	00	03	93
	11	00	25	22
	3	00	51	46
	2	00	16	46
Devragollahally	23	00	01	00
	25	00	27	15
	24	00	25	81
Anepur	77	00	02	84
	70	00	01	42
	78	00	00	85

[F. No. R-25011/8/2007-O. R-1]

S. K. CHITKARA, Under Secy.

नई दिल्ली, 24 अगस्त, 2007

का.आ. 2464.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि तमिलनाडु राज्य में चेन्नै से कर्नाटक राज्य में बेंगलुरु तक पेट्रोलियम उत्पादों के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;

और केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि उक्त भूमि में, जो इस अधिसूचना से संलग्न अनुसूची में वर्णित है और जिसमें पाइपलाइन बिछाए जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए;

अतः, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको उक्त अधिनियम की धारा 3 की उपधारा (1) के अधीन भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाने के संबंध में, श्री आर. आर. जन्नु, सक्षम प्राधिकारी, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, पाइपलाइन डीविजन, 719, भूतल फ्लोर, 4 क्रास, 7 मेन, कल्याण नगर, 1 ब्लॉक, बेंगलुरु-560043 कर्नाटक को लिखित रूप में भेज सकेगा।

## अनुसूची

तालुका : होसकोटे जिला बेंगलुरु रूरल		राज्य : कर्नाटक		
गाँव का नाम	सर्वेक्षण सं./	क्षेत्रफल		
	उप-खण्ड सं.	हेक्टर	एयर	वर्ग मीटर
1	2	3	4	5
बमनबांडे	37/ए	00	19	93
	37/बी	00	09	25
	37/सी	00	21	71
	37/डी	00	23	41
	37/पी2	00	02	93
	37/पी7	00	07	05
	37/पी8	00	06	41
	37/पी9	00	12	04
	37/पी10	00	30	66
	88	00	12	75
	87	00	07	97
	38/3	00	04	15
	47/1	00	15	16
	48/2	-	-	-
	49/1	00	04	29
	49/2	00	07	43
	50/1	00	10	84

1	2	3	4	5
बमनबाडे	50/2	-	-	-
	50/3	-	-	-
	53/2	00	07	45
	53/1	00	14	18
	54	00	09	53
	56/6	00	04	67
	55/1	00	07	01
	55/2	00	06	19
	55/3	00	05	87
	55/4	00	11	48
काजीहोसा हल्लि	90	00	19	07
	99	00	00	99
	13/2ए	00	09	22
	13/2बी	00	19	12
	14	00	06	76
	15	00	03	06
	102	00	02	37
	16/2सी	00	00	81
	16/2बी	00	04	89
	16/2ए	00	05	41
	16/1	00	18	52
	17/1	00	02	11
	17/2	00	04	63
बनहल्लि	23/1	00	17	57
	24	00	14	82
	30/2	00	20	08
	30/5	00	02	83
	30/1	00	08	91
	31/3	00	12	84
	31/2	00	09	31
	31/1	00	01	00
	32/1	00	07	84
	36/3	00	09	36
	36/2	00	11	10
	36/1	00	09	16
परमनाहल्लि	85/पी7	00	73	44
	85/पी2	-	-	-
टिंडलु	61	00	06	22
	60	00	03	16
	36/बी	00	36	36
	59	00	23	11
	32/1	00	07	65
	37/ए	00	45	25
	37/बी	-	-	-
तरवहल्लि	23	00	05	52
	65	00	11	15
	08	00	10	40
	61	00	12	14
	60	00	10	24
	02	00	37	89
	12	00	14	40
	11	00	15	12
	14	00	28	80
	38	00	10	78

1	2	3	4	5
तरवहल्लि	44	00	47	52
	2	00	13	53
	50	00	00	20
	70	00	26	82
	69/1	00	20	80

[फाइल सं. आर-25011/8/2007-ओ.आर-1]

एस. के. चिटकारा, अवर सचिव

New Delhi, the 24th August, 2007

**S.O. 2464.**—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of petroleum products from Chennai in the State of Tamilnadu to Bangalore in the State of Karnataka, a pipeline should be laid by the Indian Oil Corporation Limited;

And whereas it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (i) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may, within twenty-one days from the date on which the copies of this notification issued under sub-section (1) of Section 3 of the said, Act, as published in the Gazette of India, are made available to the general public, object in writing to the acquisition of the right of user therein or laying of the pipeline under the land to Shri R.R Jannu, Competent Authority, Indian Oil Corporation Limited, Pipelines Division, 719, Ground Floor, 4th Cross, 7th Main, Kalyana Nagar, 1st Block, Bangalore- 560043 (Karnataka).

**SCHEDULE**

Taluka : Haskote		District : Bangalore Rural		State : Karnataka	
Name of the village	Survey No./ Sub-division No.	Area			
		Hectare	Are	Sq mtr.	
1	2	3	4	5	
Bamnanabande	37/A	00	19	93	
	37/B	00	9	25	
	37/C	00	21	71	
	37/D	00	23	41	
	37/P2	00	02	93	
	37/P7	00	07	05	
	37/P8	00	06	41	
	37/P9	00	12	04	
	37/P10	00	30	66	
	88	00	12	75	

1	2	3	4	5
Bamnanabande	87	00	07	97
	38/3	00	04	15
	48/1	00	15	16
	48/2	-	-	-
	49/1	00	04	29
	49/2	00	07	43
	50/1	00	10	84
	50/2	-	-	-
	50/3	-	-	-
	53/2	00	07	45
	53/1	00	14	18
	54	00	09	53
	56/6	00	04	67
	55/1	00	07	01
	55/2	00	06	19
	55/3	00	05	87
	55/4	00	11	48
Kajihosahalli	90	00	19	07
	99	00	00	99
	13/2A	00	09	22
	13/2B	00	19	12
	14	00	06	76
	15	00	03	06
	102	00	02	37
	16/2C	00	00	81
	16/2B	00	04	89
	16/2A	00	05	41
	16/1	00	18	52
	17/1	00	02	11
	17/2	00	04	63
Banahalli	23/1	00	17	57
	24	00	14	82
	30/2	01	20	08
	30/5	00	02	83
	30/1	00	08	91
	31/3	00	12	84
	31/2	00	09	31
	31/1	00	01	00
	32/1	00	07	84
	36/3	00	09	36
	36/2	00	11	10
	36/1	00	09	16
Paramanahalli	85/P7	00	73	44
	85/P2	-	-	-
Tindlu	61	00	06	22
	60	00	03	16
	36/B	00	36	36
	59	00	23	11
	32/1	00	07	65
	37/A	00	45	25
	37/B	-	-	-
Tarabhalli	23	00	05	52
	65	00	11	15
	08	00	10	40
	61	00	12	14
	60	00	10	24
	02	00	37	89
	12	00	14	40
	11	00	15	12

1	2	3	4	5
Tarabhalli	14	00	28	80
	38	00	10	78
	44	00	47	52
	2	00	13	53
	50	00	00	20
	70	00	26	82
	69/1	00	20	80

[F. No. R-25011/8/2007-O. R-1]

S. K. CHITKARA, Under Secy.

नई दिल्ली, 24 अगस्त, 2007

का. आ. 2465.—केन्द्रीय सरकार ने पेट्रोलियम और प्राकृतिक गैस मंत्रालय के का. आ. 157 दिनांक 18-01-2007 द्वारा पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उप-धारा (1) के अधीन अधिसूचना प्रकाशित कर ब्यावर से चित्तौड़गढ़ तक पेट्रोलियम उत्पादों के परिवहन के लिए "सिद्धपुर-सांगानेर पाइपलाइन से चित्तौड़गढ़ तक ब्रान्च लाईन" के कार्यान्वयन हेतु एक शाखा पाइपलाइन बिछाने के लिये उक्त अधिसूचना में विनिर्दिष्ट तहसील चित्तौड़गढ़ जिला चित्तौड़गढ़ राजस्थान राज्य की भूमि अधिसूचित की थीं;

और, उक्त अधिसूचना की प्रतियां जनता को दिनांक 27-02-2007 तक उपलब्ध करा दी गई थीं;

और, उक्त अधिनियम की धारा 6 की उप-धारा (1) के अनुसरण में सक्षम प्राधिकारी राजस्थान ने केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और, केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात् इस अधिसूचना से उपाबद्ध अनुसूची में विनिर्दिष्ट भूमि में उपयोग का अधिकार अर्जित करने का विनिश्चय किया है;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा (1) द्वारा प्रदत्त शक्तियों को प्रयोग करते हुए, घोषणा करती है कि इस अधिसूचना से उपाबद्ध अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के उपयोग का अधिकार अर्जित किया जाता है।

और केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि उक्त भूमि में उपयोग का अधिकार केन्द्रीय सरकार में निहित होने की बजाय सभी विल्लंगों से मुक्त होकर इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगा।

## अनुसूची

तालुका : चित्तौड़गढ़	जिला: चित्तौड़गढ़	राज्य : राजस्थान		
गाँव का नाम	खसरा सं.	क्षेत्रफल		
	उप-खण्ड सं.	हेक्टर	एयर वर्ग मीटर	
1	2	3	4	5
बोजुन्दा	200	0	04	30
	141	0	07	20
	140	0	15	90
	128	0	00	70

[फाइल सं. आर-25011/31/2004-ओ.आर-1]

एस. कं. चिटकारा, अवर सचिव

New Delhi, the 24th August, 2007

**S.O. 2465.**—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas S.O. number 157 dated 18-01-2007 issued under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the land in Tehsil : Chittaurgarh, District : Chittaurgarh in the State of Rajasthan, specified in the schedule appended to that notification for the purpose of laying pipeline for the transportation of petroleum products in the State of Rajasthan from Beawar to Chittaurgarh in respect of "Branch Pipeline to Chittaurgarh from Sidhpur-Sanganer Pipeline" by the Indian Oil Corporation Limited.

And whereas copy of the said notification was made available to the general public on 27-02-2007;

And whereas, the Competent Authority has under sub-section (1) Section 6 of the said Act submitted his report to the Central Government;

And whereas, the Central Government, after considering the said report is satisfied the the right of user in the land specified in the Schedule appended to this notification is hereby acquired;

Now, therefore in exercise of the powers conferred by sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification is hereby acquired;

And, further, in exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the right of user in the said land shall instead of vesting in the Central Government, vests from the date of publication of this declaration, in the Indian Oil Corporation Limited free from all encumbrances.

#### SCHEDULE

Tehsil: Chittaurgarh District: Chittaurgarh State: Rajasthan				
Name of the Village	Khasara No.	Area		
		Hectare	Are	Sq. mtr.
1	2	3	4	5
Bojunda	200	0	04	30
	141	0	07	20
	140	0	15	90
	128	0	00	70

[F.No. R-25011/31/2004-O.R.-I]  
S.K. CHITKARA, Under Secy.

नई दिल्ली, 28 अगस्त, 2007

**का. आ. 2466.**—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उप-धारा (1) के अधीन जारी भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का. आ. 4473 तारीख 20 नवम्बर, 2006 द्वारा, उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में गेल (इण्डिया) लिमिटेड द्वारा गुजरात राज्य में दहेज-हजीरा-उरान एवं स्पूर पाइपलाइन परियोजना के माध्यम से प्राकृतिक गैस के परिवहन के लिए पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा की थी ;

और उक्त राजपत्रित अधिसूचना की प्रतियां जनता को दिनांक 26-12-2006 तक उपलब्ध करा दी गई थी;

और, पाइपलाइन बिछाने के संबंध में जनता से कोई आक्षेप प्राप्त नहीं हुए;

और सक्षम प्राधिकारी ने, उक्त अधिनियम की धारा 6 की उप-धारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और, केन्द्रीय सरकार ने, उक्त रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो जाने पर कि उक्त भूमि में पाइपलाइन बिछाने के लिए अपेक्षित हैं, उस में उपयोग का अधिकार अर्जित करने का विनिश्चय किया है;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा (1) द्वारा प्रदत्त शक्तियों को प्रयोग करते हुए, घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के उपयोग के अधिकार को अर्जित किया जाता है ;

और केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निर्देश देती है कि पाइपलाइन बिछाने के लिए भूमि में उपयोग का अधिकार, इस घोषणा के प्रकाशन की तारीख को, केन्द्रीय सरकार में निहित होने की बजाए, पाइपलाइन बिछाने का प्रस्ताव करने वाली गेल (इण्डिया) लिमिटेड में निहित होगा और तदुपरि, भूमि में ऐसे उपयोग का अधिकार, इस प्रकार अधिरोपित निबंधनों और शर्तों के अधीन रहते हुए, सभी विल्लंगमों से मुक्त, गेल (इण्डिया) लिमिटेड में निहित होगा।

#### अनुसूची

जिला	तालुका	गाँव	सं. नं.	हक्क संपादित क्षेत्र
1	2	3	4	5
नवसारी	जलालपुर	अंठाण	67	0.1500
			68	0.1200
			69	0.1350
			70	0.0825
			73	0.0600
			74	0.0015

[फा. सं. एल-14014/12/06-जी.पी. (भाग-IX)]

एस. बी. मण्डल, अवर सचिव

New Delhi, the 28th August, 2007

**S. O. 2466**—Whereas, by the notification of the Government of India in the Ministry of Petroleum and Natural Gas S.O. number 4473 dated 20th November, 2006 issued under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the land in specified in the Schedule appended to that notification for the purpose of laying pipeline for the transport of natural gas through Dahej-Hazira-Uran & its spur pipeline project in the State of Gujarat by Gail (India) Limited;

And whereas, copy of the said Gazette Notification was made available to the general public on 26-12-2006

And whereas, no objections were received from the public to the laying of the pipelines;

And whereas, the Competent Authority has under sub-section (1) of Section 6 of the said Act, submitted its report to the Central Government;

And whereas, the Central Government has, after considering the said report, decided to acquire the Right of User in the lands specified in the Schedule;

Now, therefore in exercise of the powers conferred by Sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the Right of User in the land specified in the Schedule is hereby acquired for laying the pipeline;

And further, in exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the Right of User in the said land for laying the pipeline shall, instead of vesting in the Central Government, vest, on this date of the publication of the declaration, in the GAIL (India) Limited, free from all encumbrances.

#### SCHEDULE

District	Taluka	Village	S.No.	Area to be Acquired
1	2	3	4	5
Navsari	Jalalpor	Ethan	67	0.1500
			68	0.12.00
			69	0.1350
			70	0.0825
			73	0.0600
			74	0.0015

[E.No. L-14014/12/06-(GP.) (Part IX)]

S. B. MANDAL, Under Secy.

नई दिल्ली, 29 अगस्त, 2007

का. आ. 2467.—केन्द्रीय सरकार ने पेट्रोलियम और प्राकृतिक गैस मंत्रालय के का. आ. 964 दिनांक 02-04-2007 द्वारा पेट्रोलियम

#### अनुसूची

राज्य : हरियाणा

गाँव का नाम	तहसील	जिला	हदबस्त संख्या	मुस्ततिल संख्या	खसरा/किला संख्या	क्षेत्रफल		
						हेक्टेयर	एयर	वर्गमीटर
1	2	3	4	5	6	7	8	9
1. बेगा	गन्तौर	सोनीपत	1	136	2/2	0	03	03
2. जौरासी सर्फ खास	समालखा	पानीपत	72		779	0	03	28
3. करहंस			69	99	11/1	0	00	25
4. डिवाना	पानीपत		33	26	18	0	00	25
5. महराना			29	18	19/1	0	04	05
					19/2	0	01	51
					18/2	0	00	75
					22	0	01	26
					23	0	15	93
				24	4/1	0	07	84
					4/2	0	05	06
					6/2	0	10	62
					15/2	0	04	30
					7/1	0	00	75
				25	20	0	03	79
6. बिन्दौल			28		387 & 388	0	02	53
7. रजापुर			13	63	21/2	0	02	28
					22/1/2	0	05	81
8. शौदापुर	मतलौडा		25	32	9/2/1	0	09	86

[फा. सं. एल.-14014/10/06-जी. पी.]

एस. बी. मण्डल, अवर सचिव

और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे उसके पश्चात् उक्त अधिनियम कहा जायेगा) की धारा 3 की उपधारा (1) के अधीन अधिसूचना प्रकाशित कर दादरी (उत्तर प्रदेश राज्य में) से पानीपत (हरियाणा राज्य में) तक, प्राकृतिक गैस के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा "आर-एल.एन.जी. स्पर पाइपलाइन" के सम्बन्ध में उक्त अधिसूचना से संलग्न अनुसूची में निर्दिष्ट तहसील गन्तौर जिला सोनीपत और तहसल समालखा, पानीपत, मतलौडा जिला पानीपत (हरियाणा राज्य) की भूमियों में उपयोग के अधिकार के अर्जन के अपने आशय की घोषणा की थी;

और, उक्त अधिसूचना की प्रतियां जनता को दिनांक 08-05-2007 को उपलब्ध करा दी गई थी;

और, उक्त अधिनियम की धारा 6 की उपधारा (1) के अनुसरण में सक्षम प्राधिकारी ने केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है।

और, केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात् इस अधिसूचना से उपाबद्ध अनुसूची में उपयोग का अधिकार अर्जित करने का विनिश्चय किया है।

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए घोषणा करती है कि इस अधिसूचना से उपाबद्ध अनुसूची में विनिर्दिष्ट भूमियों में पाइपलाइन बिछाने के उपयोग का अधिकार अर्जित किया जाता है।

और, केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निदेश देती है कि उक्त भूमि में उपयोग का अधिकार केन्द्रीय सरकार में निहित होने की बजाय सभी विल्लंगमों से मुक्त होकर इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगा।

New Delhi, the 29th August, 2007

**S.O. 2467.**—Whereas by notification of Government of India in Ministry of Petroleum and Natural Gas published in the Gazette of India vide Number S.O. 964 dated 2nd April, 2007, issued under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in lands specified in the Schedule appended to that notification for the purpose of laying pipeline for the transportation of Natural Gas from Dadri in the State of Uttar Pradesh to Panipat in the State of Haryana by Indian Oil Corporation Limited for implementing the "R-LNG Spur pipeline from Dadri to Panipat" in Tehsil Ganaur in District Sonipat and in Tehsil Samalkha, Panipat and Madlauda in District Panipat, in Haryana State;

And whereas, copies of the said Gazette notification were made available to the public on 8-5-2007.

And whereas, the Competent Authority has under sub-section (1) of Section 6 of the said Act, has submitted his report to the Central Government.

And whereas, the Central Government after considering the said report is satisfied that the right of user in the lands specified in the Schedule appended to this notification should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification is acquired;

And further, in exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the right of user in the said land shall instead of vesting in the Central Government, vest from the date of publication of this declaration, in the Indian Oil Corporation Limited free from all encumbrances.

### SCHEDULE

State : Haryana

Name of Village	Tehsil	District	Hadbast No.	Mustatil No.	Khasra/Killa No.	Area		
						Hectare	Acre	Square Metre
1	2	3	4	5	6	7	8	9
1. Bega	Ganaur	Sonipat	1	136	2/2	0	03	03
2. Jaurasi Surf Khas	Samalkha	Panipat	72		7/9	0	03	28
3. Karhans			69	99	11/1	0	00	25
4. Diwana	Panipat		33	26	18	0	00	25
5. Mahrana			29	18	19/1	0	04	05
					19/2	0	01	51
					18/2	0	00	75
					22	0	01	26
					23	0	15	93
				24	4/1	0	07	84
					4/2	0	05	06
					6/2	0	10	62
					15/2	0	04	30
					7/1	0	00	75
				25	20	0	03	79
6. Binjhaul			28		387 & 388	0	02	53
7. Razapur			13	63	21/2	0	02	28
					22/1/2	0	05	81
8. Shohdapur	Madlauda		25	32	9/2/1	0	09	86

[F.No. L-14014/10-06-G.P.]

S.B. MANDAL, Under Secy.

नई दिल्ली, 29 अगस्त, 2007

**का. आ. 2468.**—केन्द्रीय सरकार ने पेट्रोलियम और प्राकृतिक गैस मंत्रालय के का.आ. 965 दिनांक 02-04-2007 द्वारा पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन)

अधिनियम, 1962 (1962 का 50) (जिसे उसके पश्चात् उक्त अधिनियम कहा जाएगा) की धारा 3 (1) के अधीन अधिसूचना प्रकाशित कर दादरी (उत्तर प्रदेश राज्य में) से पानीपत (हरियाणा राज्य में) तक प्राकृतिक गैस, के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा "आर.-एल.एन.जी. स्पर पाइपलाइन" के सम्बन्ध में उक्त

अधिसूचना से संलग्न अनुसूची में निर्दिष्ट तहसील मोदीनगर जिला गाजियाबाद (उत्तर प्रदेश राज्य) की भूमि में उपयोग के अधिकार के अर्जन के अपने आशय की घोषणा की थी;

और उक्त अधिसूचना की प्रतियाँ जनता को दिनांक 08-05-2007 को उपलब्ध करा दी गई थी;

और उक्त अधिनियम की धारा 6 की उपधारा (1) के अनुसरण में सक्षम प्राधिकारी ने केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात् इस अधिसूचना से उपाबद्ध अनुसूची में उपयोग का अधिकार अर्जित करने का विनिश्चय किया है;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए घोषणा करती है कि इस अधिसूचना से उपाबद्ध अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के उपयोग का अधिकार अर्जित किया जाता है;

और केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निदेश देती है कि उक्त भूमि में उपयोग का अधिकार केन्द्रीय सरकार में निहित होने की बजाय सभी विल्लंगमों से मुक्त होकर इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगा।

#### अनुसूची

तहसील : मोदीनगर	जिला : गाजियाबाद	राज्य : उत्तर प्रदेश
गाँव का नाम	खसरा सं.	क्षेत्रफल
हेक्टेयर एयर वर्ग मीटर		
1	2	3 4 5
नेकपुर साबित नगर	1797	0 03 48

[फा. सं. एल.-14014/29/2006-जी.पी.]

एस. बी. मण्डल, अवर सचिव

New Delhi, the 29th August, 2007

**S.O. 2468.**—Whereas by notification of Government of India in the Ministry of Petroleum and Natural Gas, published in the Gazette of India *Vide* Number S.O. 965 dated the 2nd April 2007, issued under sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the land specified in the Schedule appended to this notification for the purpose of laying pipeline for the transportation of Natural Gas from Dadri in the State of Uttar Pradesh to Panipat in the State of Haryana by Indian Oil Corporation Limited for implementing the "R-LNG Spur pipelines from Dadri to Panipat" in Tehsil Modinagar, District Ghaziabad, in Uttar Pradesh State;

And whereas copies of the said Gazette Notification were made available to the public on 08-05-2007.

And whereas, the Competent Authority has under sub-section (1) of Section 6 of the said Act, submitted his report to the Central Government.

And whereas, the Central Government after considering the said report is satisfied that the right of user in the land specified in the Schedule appended to this notification should be acquired;

Now, therefore in exercise of powers conferred by sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification is acquired;

And further, in exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the right of user in the said land shall instead of vesting in the Central Government, vest from the date of publication of this declaration, in Indian Oil Corporation Limited free from all encumbrances.

#### SCHEDULE

Tehsil : Modinagar	District: Ghaziabad	State : Uttar Pradesh
Name of the Village	Khasra No.	Area
		Hectare Are Sq. mtr.
1	2	3 4 5
Nekhpur Sabit Nagar	1797	0 03 48

[F.No. L-14014/29/2006-G.P.]

S.B. MANDAL, Under Secy.

नई दिल्ली, 29 अगस्त, 2007

**का. आ. 2469.**—केन्द्रीय सरकार ने पेट्रोलियम और प्राकृतिक गैस मंत्रालय के का. आ. 970 दिनांक 02-04-2007 द्वारा पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसके पश्चात् उक्त अधिनियम कहा जाएगा) की धारा 3(1) के अधीन अधिसूचना प्रकाशित कर दादरी (उत्तर प्रदेश राज्य में) से पानीपत (हरियाणा राज्य में) तक, प्राकृतिक गैस के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा "आर.-एल.एन.जी. स्पर पाइपलाइन" के सम्बन्ध में उक्त अधिसूचना से संलग्न अनुसूची में निर्दिष्ट तहसील दादरी जिला गौतमबुद्ध नगर (उत्तर प्रदेश राज्य) की भूमि में उपयोग के अधिकार के अर्जन के अपने आशय की घोषणा की थी;

और उक्त अधिसूचना की प्रतियाँ जनता को दिनांक 8-5-2007 को उपलब्ध करा दी गई थीं;

और उक्त अधिनियम की धारा 6 की उपधारा (1) के अनुसरण में सक्षम प्राधिकारी ने केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है;

और केन्द्रीय सरकार ने उक्त रिपोर्ट पर विचार करने के पश्चात् इस अधिसूचना से उपाबद्ध अनुसूची में उपयोग का अधिकार अर्जित करने का विनिश्चय किया है;

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए घोषणा करती

है कि इस अधिसूचना से उपाबद्ध अनुसूची में विनिर्दिष्ट भूमि में पाइपलाइन बिछाने के उपयोग का अधिकार अर्जित किया जाता है।

और केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उप-धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निर्देश देती है कि उक्त भूमि में उपयोग का अधिकार केन्द्रीय सरकार में निहित होने की बजाय सभी विल्लंगमों से मुक्त होकर इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगा।

### अनुसूची

तहसील : दादरी जिला : गौतमबुद्धनगर राज्य : उत्तर प्रदेश

गाँव का नाम खसरा सं. क्षेत्रफल

हेक्टेयर एयर वर्ग मीटर

1	2	3	4	5
1. बिसाहडा	671	0	10	98
	674 मि.	0	04	50
	674 मि.	0	03	78
	679/1 मि.	0	02	34
	679/1 मि.	0	00	54
	679/1 मि.	0	00	20
	679/1 मि.	0	06	66
	680/2 मि.	0	03	96
	680/2 मि.	0	08	55
	680/2 मि.	0	01	20
	681	0	02	40
	684	0	02	34
	763 मि.	0	00	20
	764/1 मि.	0	06	48
	763 मि.	0	09	18
	764/1 मि.	0	05	60
	763 मि.	0	00	54
	764/1 मि.	0	10	54
	764/1 मि.	0	00	20
	764/1 मि.	0	00	20
	760 मि.	0	06	60
	760 मि.	0	01	20
	760 मि.	0	00	40
	759 मि.	0	00	28
	759 मि.	0	00	84
	759 मि.	0	00	56
	756 मि.	0	00	48
	756 मि.	0	00	64
	757 मि.	0	04	68
	757 मि.	0	00	54
	757 मि.	0	03	96
	852	0	09	72
	851 मि.	0	03	52
	848 मि.	0	00	45
	851 मि.	0	02	86
	848 मि.	0	08	04
	846 मि.	0	00	90
	846 मि.	0	00	54

1	2	3	4	5
1. बिसाहडा (जारी)	846 मि.	0	00	60
	846 मि.	0	00	36
	846 मि.	0	09	90
	845 मि.	0	03	12
	845 मि.	0	01	44
	846 मि.	0	00	28
	845 मि.	0	10	08
	840/1 मि.	0	06	84
	841 मि.	0	00	64
	841 मि.	0	00	20
	841 मि.	0	00	72
	840/2 मि.	0	01	80
	826/1	0	00	20
	840/1	0	01	69
	840/3 मि.	0	10	92
	826/2 मि.	0	01	08
	840/3	0	00	27
	840/3	0	00	20
	840/3 मि.	0	02	10
	829 मि.	0	02	40
	831	0	01	60
	830/1 मि.	0	03	48
	830/2 मि.	0	01	12
	829 मि.	0	00	72
	830/1 मि.	0	01	44
	830/2 मि.	0	04	64
	830/1 मि.	0	01	32
	815/1 मि.	0	06	66
	830/2 मि.	0	01	62
	815/1 मि.	0	02	61
	817/1 मि.	0	03	72
	818 मि.	0	05	98
	818 मि.	0	00	54
	818 मि.	0	00	20
	818 मि.	0	03	60
	817/1 मि.	0	04	86
	817/1 मि.	0	09	00
	817/1 मि.	0	08	58
	817/1 मि.	0	03	60
	887/2	0	01	08
	887/1	0	09	54
	637	0	02	88
	904	0	01	62
	903/1 मि.	0	16	53
	897 मि.	0	08	64
	903/1 मि.	0	00	40
	897 मि.	0	05	76
	897 मि.	0	00	52
	897 मि.	0	04	11
	898 मि.	0	01	50
	898 मि.	0	05	70
	917/2 मि.	0	09	36
	917/1 मि.	0	04	14
	898 मि.	0	00	20

1	2	3	4	5
1. बिसाहडा (जारी)	898 मि.	0	00	20
	917/1 मि.	0	00	20
	917/1 मि.	0	16	92
	583/1 मि.	0	00	36
	583/1 मि.	0	00	72
	583/1 मि.	0	00	54
	583/1 मि.	0	02	34
	583/3 मि.	0	04	34
	593 मि.	0	06	30
	584	0	00	50
	593 मि.	0	02	64
	593 मि.	0	04	86
	593 मि.	0	00	84
	585 मि.	0	01	18
	586/1 मि.	0	09	72
	585 मि.	0	02	80
	585 मि.	0	00	88
	586/1 मि.	0	10	32
	586/2 मि.	0	01	44
	575	0	03	78
	570	0	31	50
	559	0	05	04
	558	0	24	48
	555	0	00	20
2. महावड़	300	0	00	90

[फा. सं. एल.-14014/31/2006-जी.पी.]

एस. बी. मण्डल, अवर सचिव

New Delhi, the 29th August, 2007

**SO. 2469.**—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas, published in Gazette of India vide number S.O.970 dated the 2nd April 2007, issued under Sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the land specified in the Schedule appended to this Notification for the purpose of laying pipeline for the transportation of Natural Gas from Dadri in the State of Uttar Pradesh to Panipat in the State of Haryana by Indian Oil Corporation Limited for implementing the "R-LNG Spur pipelines from Dadri to Panipat" in Tehsil Dadri, District Gautambudhnagar, in Uttar Pradesh State;

And whereas copies of the said Gazette Notification were made available to the public on 08-05-2007.

And whereas, the Competent Authority has under Sub-section (1) of Section 6 of the said Act, submitted his report to the Central Government.

And whereas, the Central Government after considering the said report is satisfied that the right of user in the land specified in the Schedule appended to this Notification should be acquired;

Now, therefore in exercise of the powers conferred by Sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the right of user in the land specified in the Schedule appended to this notification is hereby acquired;

And further, in exercise of the powers conferred by Sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the right of user in the said land shall instead of vesting in the Central Government, vest from the date of publication of this declaration, in Indian Oil Corporation Limited free from all encumbrances.

**SCHEDULE**

Tehsil: Dadri	District: Gautambudh- Nagar	State: Uttar Pradesh		
Name of the Village	Khasra No.	Area		
		Hectare	Are	Sq. mtr.
1	2	3	4	5
1. Bisahra	671	0	10	98
	674 Min	0	04	50
	674 Min	0	03	78
	679/1 Min	0	02	34
	679/1 Min	0	00	54
	679/1 Min	0	00	20
	679/1 Min	0	06	66
	680/2 Min	0	03	96
	680/2 Min	0	08	55
	680/2 Min	0	01	20
	681	0	02	40
	684	0	02	34
	763 Min	0	00	20
	764/1 Min	0	06	48
	763 Min	0	09	18
	764/1 Min	0	05	60
	763 Min	0	00	54
	764/1 Min	0	10	54
	764/1 Min	0	00	20
	764/1 Min	0	00	20
	760 Min	0	06	60
	760 Min	0	01	20
	760 Min	0	00	40
	759 Min	0	00	28
	759 Min	0	00	84
	759 Min	0	00	56
	756 Min	0	00	48
	756 Min	0	00	64
	757 Min	0	04	68

1	2	3	4	5	1	2	3	4	5
1. Bishara (Contd.)	757 Min	0	00	54	Bishara (Contd.)	817/1 Min	0	09	00
	757 Min	0	03	96		817/1 Min	0	08	58
	852	0	09	72		817/1 Min	0	03	60
	851 Min	0	03	52		887/2	0	01	08
	848 Min	0	00	45		887/1	0	09	54
	851 Min	0	02	86		637	0	02	88
	848 Min	0	08	04		904	0	01	62
	846 Min	0	00	90		903/1 Min	0	16	53
	846 Min	0	00	54		897 Min	0	08	64
	846 Min	0	00	60		903/1 Min	0	00	40
	846 Min	0	00	36		897 Min	0	05	76
	846 Min	0	09	90		897 Min	0	00	52
	845 Min	0	03	12		897 Min	0	04	11
	845 Min	0	01	44		898 Min	0	01	50
	846 Min	0	00	28		898 Min	0	05	70
	845 Min	0	10	08		917/2 Min	0	09	36
	840/1 Min	0	06	84		917/1 Min	0	04	14
	841 Min	0	00	64		898 Min	0	00	20
	841 Min	0	00	20		898 Min	0	00	20
	841 Min	0	00	72		917/1 Min	0	00	20
	840/2 Min	0	01	80		917/1 Min	0	16	92
	826/1 Min	0	00	20		583/1 Min	0	00	36
	840/1 Min	0	01	69		583/1 Min	0	09	72
	840/3 Min	0	10	92		583/1 Min	0	00	54
	826/2 Min	0	01	08		583/1 Min	0	02	34
	840/3 Min	0	00	27		583/3 Min	0	04	34
	840/3 Min	0	00	20		593 Min	0	06	30
	840/3 Min	0	02	10		584	0	00	50
	829 Min	0	02	40		593 Min	0	02	64
	831	0	01	60		593 Min	0	04	86
	830/1 Min	0	03	48		593 Min	0	00	84
	830/2 Min	0	01	12		585 Min	0	01	18
	829 Min	0	00	72		586/1 Min	0	09	72
	830/1 Min	0	01	44		585 Min	0	02	80
	830/2 Min	0	04	64		585 Min	0	00	88
	830/1 Min	0	01	32		586/1 Min	0	10	32
	815/1 Min	0	06	66		586/2 Min	0	01	44
	830/2 Min	0	01	62		575	0	03	78
	815/1 Min	0	02	61		570	0	31	50
	817/1 Min	0	03	72		559	0	05	04
	818 Min	0	05	98		558	0	24	48
	818 Min	0	00	54		555	0	00	20
	818 Min	0	00	20	2. Mahawar	300	0	00	90
	818 Min	0	03	60					
	817/1 Min	0	04	86					

[F.No. L-14014/31/2006-G.P.]

S.B. MANDAL, Under Secy.

नई दिल्ली, 27 अगस्त, 2007

का. आ. 2470.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइप लाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 6 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय द्वारा जारी नीचे दी गई गणित का.आ. संख्याओं और तारीखों वाली अधिसूचनाओं द्वारा उन अधिसूचनाओं से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार के अर्जन का अधिकार प्राप्त किया था;

और केन्द्रीय सरकार ने, उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त भूमि में सभी विल्लंगनों से मुक्त उपयोग के अधिकार हिन्दुस्तान पेट्रोलियम कॉर्पोरेशन में निहित किए थे;

और जबकि सक्षम प्राधिकारी ने केन्द्रीय सरकार को रिपोर्ट दी है कि मोटर स्प्रीट, उत्कृष्ट मिट्टी का तेल और वेग डीजल के परिवहन के लिए महाराष्ट्र राज्य में लोनी (पुणे) से पकनी (सोलापुर) हजारवाडी के रास्ते तक पाइपलाइन बिछाई जा चुकी है, अतः ऐसी भूमि के बारे में जिसका विवरण इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट है, प्रचालन समाप्त किया जाए;

अतः अब, केन्द्रीय सरकार पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) नियम, 1963 के नियम 4 के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुये उक्त अनुसूची के स्तंभ 7 में उल्लिखित तारीखों को महाराष्ट्र राज्य में मार्गाधिकार गतिविधियों की प्रचालन समाप्ति की तारीख के रूप में घोषित करती है।

## अनुसूची

क्र. सं.	का.आ.नं.व. तारीख	गांव का नाम	तालुका	जिला	राज्य	प्रचालन समाप्ति की तारीख
1	2	3	4	5	6	7
1.	2134 तिथि 09-06-2005	कदमवाकवस्ती	हवेली	पुणे	महाराष्ट्र	30-04-2007
	261 तिथि 17-01-2006	लोनी कालभोर	हवेली	पुणे	महाराष्ट्र	30-04-2007
	और 4932 तिथि 22-12-2006	आलंदी म्हातोबाची	हवेली	पुणे	महाराष्ट्र	30-04-2007
2.	2593 तिथि 07-07-2005	सोनोरी	पुरंदर	पुणे	महाराष्ट्र	30-04-2007
	4202 तिथि 09-11-2005	वनपुरी	पुरंदर	पुणे	महाराष्ट्र	30-04-2007
	और 393 तिथि 08-02-2007	कुंभारवलण	पुरंदर	पुणे	महाराष्ट्र	30-04-2007
		खलद	पुरंदर	पुणे	महाराष्ट्र	30-04-2007
		शिवरी	पुरंदर	पुणे	महाराष्ट्र	30-04-2007
		शिंदेवाडी	पुरंदर	पुणे	महाराष्ट्र	30-04-2007
		पांगारे	पुरंदर	पुणे	महाराष्ट्र	30-04-2007
		खेंगरेवाडी	पुरंदर	पुणे	महाराष्ट्र	30-04-2007
		परिंचे	पुरंदर	पुणे	महाराष्ट्र	30-04-2007
		हरणी	पुरंदर	पुणे	महाराष्ट्र	30-04-2007
		वीर	पुरंदर	पुणे	महाराष्ट्र	30-04-2007
		मांडकी	पुरंदर	पुणे	महाराष्ट्र	30-04-2007
		जेऊर	पुरंदर	पुणे	महाराष्ट्र	30-04-2007
3.	1847 तिथि 18-05-2005	पिंपरे बु.	खंडाला	सतारा	महाराष्ट्र	30-04-2007
	4641 तिथि 08-12-2005	बावकलावाडी	खंडाला	सतारा	महाराष्ट्र	30-04-2007
	और 382 तिथि 05-02-2007	मरीआईची वाडी	खंडाला	सतारा	महाराष्ट्र	30-04-2007
		लोणंद	खंडाला	सतारा	महाराष्ट्र	30-04-2007
		बालूपाटलाची वाडी	खंडाला	सतारा	महाराष्ट्र	30-04-2007
4.	1911 तिथि 26-05-2005	कोरेगाँव	फलटण	सतारा	महाराष्ट्र	30-04-2007
	4203 तिथि 09-11-2005	तरडगाँव	फलटण	सतारा	महाराष्ट्र	30-04-2007
	और 379 तिथि 05-02-2007	चव्हाणवाडी	फलटण	सतारा	महाराष्ट्र	30-04-2007
		सासवड	फलटण	सतारा	महाराष्ट्र	30-04-2007
		घाडगेवाडी	फलटण	सतारा	महाराष्ट्र	30-04-2007
		बिबी	फलटण	सतारा	महाराष्ट्र	30-04-2007
		वडगाँव	फलटण	सतारा	महाराष्ट्र	30-04-2007
		वाघोशी	फलटण	सतारा	महाराष्ट्र	30-04-2007
		ताथवडे	फलटण	सतारा	महाराष्ट्र	30-04-2007

1	2	3	4	5	6	7
5.	1848 तिथि 19-05-2005	मोल	खटाव	सतारा	महाराष्ट्र	30-04-2007
	37 तिथि 05-01-2006 और	डिस्कल	खटाव	सतारा	महाराष्ट्र	30-04-2007
	380 तिथि 05-02-2007	ललगुण	खटाव	सतारा	महाराष्ट्र	30-04-2007
		नागनाथवाडी	खटाव	सतारा	महाराष्ट्र	30-04-2007
		पवारवाडी	खटाव	सतारा	महाराष्ट्र	30-04-2007
		वर्धनगड	खटाव	सतारा	महाराष्ट्र	30-04-2007
		पुसेगाँव	खटाव	सतारा	महाराष्ट्र	30-04-2007
		विसापुर	खटाव	सतारा	महाराष्ट्र	30-04-2007
		खातगुण	खटाव	सतारा	महाराष्ट्र	30-04-2007
		जखणगाँव	खटाव	सतारा	महाराष्ट्र	30-04-2007
		वडखल	खटाव	सतारा	महाराष्ट्र	30-04-2007
		भोसरे	खटाव	सतारा	महाराष्ट्र	30-04-2007
		लोणी	खटाव	सतारा	महाराष्ट्र	30-04-2007
		वरूड	खटाव	सतारा	महाराष्ट्र	30-04-2007
		औंध	खटाव	सतारा	महाराष्ट्र	30-04-2007
		खरशिगे	खटाव	सतारा	महाराष्ट्र	30-04-2007
		येलीव	खटाव	सतारा	महाराष्ट्र	30-04-2007
		पलशी	खटाव	सतारा	महाराष्ट्र	30-04-2007
		लाडेगाँव	खटाव	सतारा	महाराष्ट्र	30-04-2007
		वांझोली	खटाव	सतारा	महाराष्ट्र	30-04-2007
		रहाटणी	खटाव	सतारा	महाराष्ट्र	30-04-2007
		ओराडे	खटाव	सतारा	महाराष्ट्र	30-04-2007
6.	2067 तिथि 09-06-2005	उपाले वांगी	कडेगाँव	सांगली	महाराष्ट्र	30-04-2007
	4758 तिथि 23-12-2005	उपाले मायणी	कडेगाँव	सांगली	महाराष्ट्र	30-04-2007
	और 388 तिथि 08-02-2007	तोंडोली	कडेगाँव	सांगली	महाराष्ट्र	30-04-2007
		अमरापुर	कडेगाँव	सांगली	महाराष्ट्र	30-04-2007
		येवलेवाडी	कडेगाँव	सांगली	महाराष्ट्र	30-04-2007
		हणमंत वडिये	कडेगाँव	सांगली	महाराष्ट्र	30-04-2007
		शिवणी	कडेगाँव	सांगली	महाराष्ट्र	30-04-2007
		वडिये रायबाग	कडेगाँव	सांगली	महाराष्ट्र	30-04-2007
		सेलकबाव	कडेगाँव	सांगली	महाराष्ट्र	30-04-2007
7.	2935 तिथि 18-08-2005	भालवणी	खानापुर	सांगली	महाराष्ट्र	30-04-2007
	339 तिथि 24-01-2006	अलसुंद	खानापुर	सांगली	महाराष्ट्र	30-04-2007
	और 389 तिथि 08-02-2007	तांदुलवाडी	खानापुर	सांगली	महाराष्ट्र	30-04-2007
8.	2594 तिथि 08-07-2005	आंधली	पलुस	सांगली	महाराष्ट्र	30-04-2007
	959 तिथि 03-03-2006	मोराले	पलुस	सांगली	महाराष्ट्र	30-04-2007
		बांबवडे	पलुस	सांगली	महाराष्ट्र	30-04-2007
	22 तिथि 03-01-2007	हजारवाडी	पलुस	सांगली	महाराष्ट्र	30-04-2007
	और 23 तिथि 03-01-2007	वसगडे	पलुस	सांगली	महाराष्ट्र	30-04-2007
9.	7250 तिथि 28-07-2005	येलावी	तासगांव	सांगली	महाराष्ट्र	30-04-2007
	1963 तिथि 15-05-2006	निमणी	तासगांव	सांगली	महाराष्ट्र	30-04-2007
	4720 तिथि 08-12-2006	नेहरूनगर	तासगांव	सांगली	महाराष्ट्र	30-04-2007
	4721 तिथि 08-12-2006	तासगांव	तासगांव	सांगली	महाराष्ट्र	30-04-2007
	और तिथि 08-12-2006	चिंचणी	तासगांव	सांगली	महाराष्ट्र	30-04-2007
		भैरेवाडी	तासगांव	सांगली	महाराष्ट्र	30-04-2007
		सावर्डे	तासगांव	सांगली	महाराष्ट्र	30-04-2007
		कौलगे	तासगांव	सांगली	महाराष्ट्र	30-04-2007
		वाघापुर	तासगांव	सांगली	महाराष्ट्र	30-04-2007

1	2	3	4	5	6	7
		खुजगांव	तासगांव	सांगली	महाराष्ट्र	30-04-2007
		बस्तवडे	तासगांव	सांगली	महाराष्ट्र	30-04-2007
		सावळज	तासगांव	सांगली	महाराष्ट्र	30-04-2007
		डोंगरसोनी	तासगांव	सांगली	महाराष्ट्र	30-04-2007
		दहिवडी	तासगांव	सांगली	महाराष्ट्र	30-04-2007
		जरंडी	तासगांव	सांगली	महाराष्ट्र	30-04-2007
10.	2596 तिथि 12-07-2005 और 4759 तिथि 23-12-2005	तिसंगी	कवठे महाकाल	सांगली	महाराष्ट्र	30-04-2007
		घाटनांदे	कवठे महाकाल	सांगली	महाराष्ट्र	30-04-2007
11.	2752 तिथि 28-07-2005 580 तिथि 08-02-2006 और 626 तिथि 02-03-2007	पाचेगाँव बुद्रुक	सांगोला	सोलापुर	महाराष्ट्र	30-04-2007
		कोंबडवाडी	सांगोला	सोलापुर	महाराष्ट्र	30-04-2007
		कोले	सांगोला	सोलापुर	महाराष्ट्र	30-04-2007
		जुनोनी	सांगोला	सोलापुर	महाराष्ट्र	30-04-2007
		करंडेवाडी	सांगोला	सोलापुर	महाराष्ट्र	30-04-2007
		हातीद	सांगोला	सोलापुर	महाराष्ट्र	30-04-2007
		मिसालवाडी	सांगोला	सोलापुर	महाराष्ट्र	30-04-2007
		उधनवाडी	सांगोला	सोलापुर	महाराष्ट्र	30-04-2007
		राजुरी	सांगोला	सोलापुर	महाराष्ट्र	30-04-2007
		वाटांबरे	सांगोला	सोलापुर	महाराष्ट्र	30-04-2007
		निजामपुर	सांगोला	सोलापुर	महाराष्ट्र	30-04-2007
		अकोला	सांगोला	सोलापुर	महाराष्ट्र	30-04-2007
		कडलास	सांगोला	सोलापुर	महाराष्ट्र	30-04-2007
		मेडशिगी	सांगोला	सोलापुर	महाराष्ट्र	30-04-2007
		वाडेगाँव	सांगोला	सोलापुर	महाराष्ट्र	30-04-2007
		राजापुर	सांगोला	सोलापुर	महाराष्ट्र	30-04-2007
12.	2933 तिथि 18-08-2005 864 तिथि 03-03-2006 और 24 तिथि 03-01-2007	लक्ष्मी दहिवडी	मंगलवेढा	सोलापुर	महाराष्ट्र	30-04-2007
		आंधलगाँव	मंगलवेढा	सोलापुर	महाराष्ट्र	30-04-2007
		सेलेवाडी	मंगलवेढा	सोलापुर	महाराष्ट्र	30-04-2007
		अकोले	मंगलवेढा	सोलापुर	महाराष्ट्र	30-04-2007
		मंगलवेढा	मंगलवेढा	सोलापुर	महाराष्ट्र	30-04-2007
		देवगाँव	मंगलवेढा	सोलापुर	महाराष्ट्र	30-04-2007
		धरमगाँव	मंगलवेढा	सोलापुर	महाराष्ट्र	30-04-2007
		ढवलस	मंगलवेढा	सोलापुर	महाराष्ट्र	30-04-2007
		मुढवी	मंगलवेढा	सोलापुर	महाराष्ट्र	30-04-2007
		उचेठाण	मंगलवेढा	सोलापुर	महाराष्ट्र	30-04-2007
13.	3012 तिथि 24-08-2005 4757 तिथि 23-12-2005 और 392 तिथि 08-02-2007	आंबे चिंचोली	पंढरपुर	सोलापुर	महाराष्ट्र	30-04-2007
		शंकरगाँव	पंढरपुर	सोलापुर	महाराष्ट्र	30-04-2007
		पुलूजवाडी	पंढरपुर	सोलापुर	महाराष्ट्र	30-04-2007
14.	3127 तिथि 29-08-2005 4522 तिथि 30-11-2005 और 391 तिथि 08-02-2007	कोथाले	मोहोल	सोलापुर	महाराष्ट्र	30-04-2007
		अंकोली	मोहोल	सोलापुर	महाराष्ट्र	30-04-2007
		कुरुल	मोहोल	सोलापुर	महाराष्ट्र	30-04-2007
		काटेवाडी	मोहोल	सोलापुर	महाराष्ट्र	30-04-2007
		विरवडे बुद्रुक	मोहोल	सोलापुर	महाराष्ट्र	30-04-2007
		पोफली	मोहोल	सोलापुर	महाराष्ट्र	30-04-2007
		विरवडे खुर्द	मोहोल	सोलापुर	महाराष्ट्र	30-04-2007
15.	2136 तिथि 13-06-2005 744 तिथि 24-02-2006 और 390 तिथि 08-02-2007	पकणी	उ. सोलापुर	सोलापुर	महाराष्ट्र	30-04-2007

[फा. सं. आर-31015/4/2007-ओआर-II]

ए. गोस्वामी, अवर सचिव

New Delhi, the 27th August, 2007

**S.O. 2470.**—Whereas by notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O. Nos. and dates mentioned in the Schedule below issued under Sub-section (i) of Section 6 of the Petroleum and Mineral Pipelines (Acquisition of Right of user in Land) Act, 1962 (50 of 1962), the Central Government acquired the right of user in the said lands specified in the schedule appended to those notification;

AND, WHEREAS, in exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government vested the right of user in the said lands free from all encumbrances in the Hindustan Petroleum Corporation Limited;

AND, WHEREAS, the Competent Authority has made a report to the Central Government that the pipeline for the purpose of transportation of Motor Spirit, Superior Kerosene Oil and High Speed Diesel from Loni installation of Hindustan Petroleum Corporation Limited, Pune to Pakni (Solapur) via Hazarwadi in the State of Maharashtra has been laid in the said lands and hence the ROU operations may be terminated in the State of Maharashtra in respect of the said lands as specified in the Schedule appended to this Notification;

Now, therefore, in exercise of the powers conferred by Rule 4 of Petroleum and Minerals. Pipelines (Acquisition of Right of User in Land) Rules 1963, the Central Government hereby declare the dates mentioned in Column 7 of the said schedule as the dates of termination of operations in ROU in the State of Maharashtra.

**SCHEDULE**

Sr. No.	S.O. No. & Date	Name of Village	Taluka	District	State	Date of Termination
1	2	3	4	5	6	7
1.	2134 dt. 09-06-2005	Kadam Wakwasti	Haveli	Pune	Maharashtra	30-04-2007
	261 dt. 17-01-2006 &	Loni Kalbhor	Haveli	Pune	Maharashtra	30-04-2007
	4932 dt. 22-12-2006	Alandi (Mhatobachi)	Haveli	Pune	Maharashtra	30-04-2007
2.	2593 dt. 07-07-2005	Sonori	Purandhar	Pune	Maharashtra	30-04-2007
	4202 dt. 09-11-2005 &	Vanpuri	Purandhar	Pune	Maharashtra	30-04-2007
	393 dt. 08-02-2007	Kumbharvalan	Purandhar	Pune	Maharashtra	30-04-2007
		Khalad	Purandhar	Pune	Maharashtra	30-04-2007
		Shivari	Purandhar	Pune	Maharashtra	30-04-2007
		Shindewadi	Purandhar	Pune	Maharashtra	30-04-2007
		Pangare	Purandhar	Pune	Maharashtra	30-04-2007
		Khengrewadi	Purandhar	Pune	Maharashtra	30-04-2007
		Parinche	Purandhar	Pune	Maharashtra	30-04-2007
		Harni	Purandhar	Pune	Maharashtra	30-04-2007
		Vir	Purandhar	Pune	Maharashtra	30-04-2007
		Mandki	Purandhar	Pune	Maharashtra	30-04-2007
		Jeur	Purandhar	Pune	Maharashtra	30-04-2007
3.	1847 dt. 18-05-2005	Pimpri Bk.	Khandala	Satara	Maharashtra	30-04-2007
	4641 dt. 08-12-2005 &	Bavkalwadi	Khandala	Satara	Maharashtra	30-04-2007
	382 dt. 05-02-2007	Mariaichiwadi	Khandala	Satara	Maharashtra	30-04-2007
		Lonand	Khandala	Satara	Maharashtra	30-04-2007
		Balupatlachi Wadi	Khandala	Satara	Maharashtra	30-04-2007
4.	1911 dt. 26-05-2005	Koregaon	Phaltan	Satara	Maharashtra	30-04-2007
	4203 dt. 09-11-2005 &	Taradgaon	Phaltan	Satara	Maharashtra	30-04-2007
	379 dt. 05-02-2007	Chauhanwadi	Phaltan	Satara	Maharashtra	30-04-2007
		Sasvad	Phaltan	Satara	Maharashtra	30-04-2007
		Ghadgewadi	Phaltan	Satara	Maharashtra	30-04-2007
		Bibi	Phaltan	Satara	Maharashtra	30-04-2007
		Vadgaon	Phaltan	Satara	Maharashtra	30-04-2007
		Waghoshi	Phaltan	Satara	Maharashtra	30-04-2007
		Tathavade	Phaltan	Satara	Maharashtra	30-04-2007
5.	1848 dt. 19-05-2005	Mol	Khatav	Satara	Maharashtra	30-04-2007
	37 dt. 05-01-2006 &	Diskal	Khatav	Satara	Maharashtra	30-04-2007

1	2	3	4	5	6	7
	380 dt. 05-02-2007	Lalgun	Khatav	Satara	Maharashtra	30-04-2007
		Nagnathwadi	Khatav	Satara	Maharashtra	30-04-2007
		Pawarwadi	Khatav	Satara	Maharashtra	30-04-2007
		Vardhangad	Khatav	Satara	Maharashtra	30-04-2007
		Pusegaon	Khatav	Satara	Maharashtra	30-04-2007
		Visapur	Khatav	Satara	Maharashtra	30-04-2007
		Khatgun	Khatav	Satara	Maharashtra	30-04-2007
		Jakhangaon	Khatav	Satara	Maharashtra	30-04-2007
		Vadkhal	Khatav	Satara	Maharashtra	30-04-2007
		Bhosre	Khatav	Satara	Maharashtra	30-04-2007
		Loni	Khatav	Satara	Maharashtra	30-04-2007
		Varud	Khatav	Satara	Maharashtra	30-04-2007
		Aundh	Khatav	Satara	Maharashtra	30-04-2007
		Kharshinge	Khatav	Satara	Maharashtra	30-04-2007
		Yeleev	Khatav	Satara	Maharashtra	30-04-2007
		Palshi	Khatav	Satara	Maharashtra	30-04-2007
		Ladegaon	Khatav	Satara	Maharashtra	30-04-2007
		Vanjholi	Khatav	Satara	Maharashtra	30-04-2007
		Rahatni	Khatav	Satara	Maharashtra	30-04-2007
		Chorade	Khatav	Satara	Maharashtra	30-04-2007
6.	2067 dt. 09-06-2005	Upale Vangi	Kadegaon	Sangli	Maharashtra	30-04-2007
	4758 dt. 23-12-2005 & 388 dt. 08-02-2007	Upale Mayni	Kadegaon	Sangli	Maharashtra	30-04-2007
		Tondoli	Kadegaon	Sangli	Maharashtra	30-04-2007
		Amrapur	Kadegaon	Sangli	Maharashtra	30-04-2007
		Yevelevadi	Kadegaon	Sangli	Maharashtra	30-04-2007
		Hanmant Vadiye	Kadegaon	Sangli	Maharashtra	30-04-2007
		Shivni	Kadegaon	Sangli	Maharashtra	30-04-2007
		Vadiye Raybagh	Kadegaon	Sangli	Maharashtra	30-04-2007
		Shelegbav	Kadegaon	Sangli	Maharashtra	30-04-2007
7.	2935 dt. 18-08-2005	Bhalavani	Khanapur	Sangli	Maharashtra	30-04-2007
	339 dt. 24-01-2006 & 389 dt. 08-02-2007	Alsund	Khanapur	Sangli	Maharashtra	30-04-2007
		Tandulvadi	Khanapur	Sangli	Maharashtra	30-04-2007
8.	2594 dt. 08-07-2005	Andhali	Palus	Sangli	Maharashtra	30-04-2007
	959 dt. 03-03-2006	Morale	Palus	Sangli	Maharashtra	30-04-2007
	22 dt. 03-01-2007 & 23 dt. 03-01-2007	Bambavade	Palus	Sangli	Maharashtra	30-04-2007
		Hazarwadi	Palus	Sangli	Maharashtra	30-04-2007
		Vasagde	Palus	Sangli	Maharashtra	30-04-2007
9.	2750 dt. 28-07-2005	Yelavi	Tasgaon	Sangli	Maharashtra	30-04-2007
	1963 dt. 15-05-2006	Nimani	Tasgaon	Sangli	Maharashtra	30-04-2007
	4720 dt. 08-12-2006	Nehrunagar	Tasgaon	Sangli	Maharashtra	30-04-2007
	4721 dt. 08-12-2006 & 4722 dt. 08-12-2006	Tasgaon	Tasgaon	Sangli	Maharashtra	30-04-2007
		Chinchani	Tasgaon	Sangli	Maharashtra	30-04-2007
		Bahirewadi	Tasgaon	Sangli	Maharashtra	30-04-2007
		Sawarde	Tasgaon	Sangli	Maharashtra	30-04-2007
		Kaulge	Tasgaon	Sangli	Maharashtra	30-04-2007
		Vaghapur	Tasgaon	Sangli	Maharashtra	30-04-2007
		Khujgaon	Tasgaon	Sangli	Maharashtra	30-04-2007
		Bastawade	Tasgaon	Sangli	Maharashtra	30-04-2007
		Sawlaj	Tasgaon	Sangli	Maharashtra	30-04-2007
		Dongar Soni	Tasgaon	Sangli	Maharashtra	30-04-2007
		Dahivadi	Tasgaon	Sangli	Maharashtra	30-04-2007
		Jarandi	Tasgaon	Sangli	Maharashtra	30-04-2007
10.	2596 dt. 12-07-2005	Tisangi	Kavathe Mahankal	Sangli	Maharashtra	30-04-2007
	4759 dt. 23-12-2005	Ghatnandre	Kavathe Mahankal	Sangli	Maharashtra	30-04-2007

1	2	3	4	5	6	7
11.	2752 dt. 28-07-2005 580 dt. 08-02-2006 & 626 dt. 02-03-2007	Pachegaon Budruk Kombadwadi Kole Junoni Karandewadi Hatid Misalwadi Udhanwadi Rajuri Watambre Nijampur Akola Kadlas Medsingi Wadegaon Rajapur	Sangola Sangola Sangola Sangola Sangola Sangola Sangola Sangola Sangola Sangola Sangola Sangola Sangola Sangola Sangola Sangola	Solapur Solapur Solapur Solapur Solapur Solapur Solapur Solapur Solapur Solapur Solapur Solapur Solapur Solapur Solapur Solapur	Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra	30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007
12.	2933 dt. 18-08-2005 864 dt. 03-03-2006 & 24 dt. 03-01-2007	Lakshmi Dahivadi Andhalgaon Shelevadi Akole Mangalvedha Degaon Dharmgaon Dhavlas Mudhvi Uchethan	Mangalvedha Mangalvedha Mangalvedha Mangalvedha Mangalvedha Mangalvedha Mangalvedha Mangalvedha Mangalvedha Mangalvedha	Solapur Solapur Solapur Solapur Solapur Solapur Solapur Solapur Solapur Solapur	Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra	30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007
13.	13012 dt. 24-08-2005 4757 dt. 23-12-2005 & 392 dt. 08-02-2007	Ambe Chincholi Shankargaon Puluvadi	Pandharpur Pandharpur Pandharpur	Solapur Solapur Solapur	Maharashtra Maharashtra Maharashtra	30-04-2007 30-04-2007 30-04-2007
14.	3127 dt. 29-08-2005 4522 dt. 30-11-2005 & 391 dt. 08-02-2007	Kothale Ankoli Kurul Katevadi Virvade Budruk Pophli Virvade Khurd Pakni	Mohol Mohol Mohol Mohol Mohol Mohol Mohol Mohol	Solapur Solapur Solapur Solapur Solapur Solapur Solapur Solapur	Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra Maharashtra	30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007 30-04-2007
15.	2136 dt. 13-06-2005 744 dt. 24-02-2006 & 390 dt. 08-02-2007		N. Solapur	Solapur	Maharashtra	30-04-2007

[File No. R-31015/4/2007-OR-II]

A. GOSWAMI, Under Secy.

नई दिल्ली, 30 अगस्त, 2007

का. आ. 2471.—तेल उद्योग (विकास) अधिनियम 1974 (1974 का 47) की उप-धारा (3) के खण्ड (3) द्वारा प्रदत्त की गई शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा निम्नलिखित अधिकारियों को तेल उद्योग विकास बोर्ड के सदस्य के रूप में, उनके सामने दर्शायी गई अवधि के लिए, या अगला आदेश जारी होने तक, जो भी पहले हो, नियुक्त/पुनर्नियुक्त करती है :-

	से	तक
1. श्री आर. एस. शर्मा, अध्यक्ष एवं प्रबंध निदेशक, तेल एवं प्राकृतिक गैस कॉर्पोरेशन लि.	4-7-2007	3-7-2009
2. श्री अशोक सिन्हा, अध्यक्ष एवं प्रबंध निदेशक, भारत पेट्रोलियम कॉर्पोरेशन लि.	19-8-2007	18-8-2009

[सं. जी-35012/2/91-वित्त-II]

मीरा शेखर, अवर सचिव

New Delhi, the 30th August, 2007

**S.O. 2471.**—In exercise of the powers conferred by Sub-section (3) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints/re-appoints the following officers as Members of the Oil Industry Development Board for the period shown against their names or until further orders, whichever is earlier :—

	From	To
1. Shri R. S. Sharma, Chairman & Managing Director, Oil & Natural Gas Corporation Ltd.,	4-7-2007	3-7-2009
2. Shri Ashok Sinha, Chairman & Managing Director, Bharat Petroleum Corporation Ltd.	19-8-2007	18-8-2009

[No. G-35012/2/91-Fin. II]

MEERA SHEKHAR, Under Secy.

नई दिल्ली, 30 अगस्त, 2007

**अनुसूची**

केन्दारी कोल माईनिंग ब्लाक

जिला-हजारीबाग, झारखंड

रेखांक सं. एन. टी.पी.सी./सी.एम./एस.ई./सी-4(1)/

केन्दारी/06/01(आर 1) तारीख 15 फरवरी, 2007

**का.आ. 2472.**—केन्द्रीय सरकार को यह प्रतीत होता है कि इससे उपाबद्ध अनुसूची में उल्लिखित भूमि में कोयला अभिप्राप्त किए जाने की संभावना है ;

अतः, अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम 1957, (1957 का 20), की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उसमें कोयले का पूर्वोक्षण करने के अपने आशय की सूचना देती है ;

इस अधिसूचना के अंतर्गत आने वाले क्षेत्र का आरेख सं. एन. टी.पी.सी./सी.एम./एस.ई./सी-4(1)/केन्दारी/06/01 (आर 1) तारीख 15 फरवरी, 2007 का निरीक्षण, महाप्रबंधक-कोल माईनिंग, एन.टी.पी.सी. लिमिटेड, प्रथम तल, पी.डी.आई.एल. बिल्डिंग, सैक्टर-1, नोएडा, उत्तर प्रदेश-201301 या अपर महाप्रबंधक, भारसाधक का कार्यालय, एन.टी.पी.सी. लिमिटेड/पकरी बरवाडीह, चत्ती बरियातु और केन्दारी कोल माईनिंग प्रोजेक्ट, एनटीपीसी लिमिटेड, ओल्ड बनारस रोड, नबाबगंज, हजारीबाग, पिन-825301 या मुख्य महाप्रबंधक (खोज प्रभाग) का कार्यालय, सेन्ट्रल माइन्स प्लानिंग एण्ड डिजाईन इंस्टीट्यूट, गोडवाना प्लेस, कांके रोड, रांची या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट कोलकाता या जिला कलेक्टर जिला हजारीबाग (झारखण्ड) के कार्यालय में किया जा सकता है।

इस अधिसूचना के अंतर्गत आने वाली भूमि में हितवद्ध सभी व्यक्ति, उक्त अधिनियम की धारा 13 की उप-धारा (7) में निर्दिष्ट सभी नक्शों, चार्टों और अन्य दस्तावेजों को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से नब्बे दिन के भीतर अपर महाप्रबंधक, भारसाधक का कार्यालय, चत्ती बरियातु और केन्दारी कोल माईनिंग प्रोजेक्ट, एनटीपीसी लिमिटेड, ओल्ड बनारस रोड, नबाबगंज, हजारीबाग, पिन-825301 को भेजें।

क्र. सं.	ग्राम का नाम	थाना	ग्राम सं.	जिला	क्षेत्रफल हेक्टेयर में (लगभग)	टिप्पणी
1.	तरहेसा	केन्दारी	10	हजारीबाग	17.29 42.70	भाग
2.	पाण्डू	केन्दारी	11	हजारीबाग	168.75 416.81	भाग
3.	पगार	केन्दारी	19	हजारीबाग	190.86 471.42	भाग
4.	कावेद	केन्दारी	20	हजारीबाग	40.74 100.63	पूरा
5.	बालेदेवरी	केन्दारी	21	हजारीबाग	55.65 137.46	पूरा
6.	बसरिया	केन्दारी	22	हजारीबाग	103.93 256.71	पूरा
7.	लोचर	केन्दारी	23	हजारीबाग	76.78 189.65	भाग
कुल योग					654.00 1615.38	हेक्टेयर एकड़ (लगभग) (लगभग)

**सीमा वर्णन :**

रेखा क-ख : यह रेखा ग्राम पाण्डू (ग्राम सं.-11) के उत्तर-पश्चिम किनारे पर बिन्दु 'क' से आरंभ होकर ग्राम तरहेसा (ग्राम सं. 10) के दक्षिणी भाग से होकर गुजरती है और ग्राम तरहेसा की पूर्वी सीमा के पास बिन्दु 'ख' पर समाप्त होती है।

- रेखा ख-ग : यह रेखा ग्राम तरहेसा के पूर्वी भाग के पास स्थित बिन्दु 'ख' से आरम्भ होकर दक्षिण की ओर बढ़ती हुई ग्राम तरहेसा के बिन्दु 'ग' पर जो दक्षिण पूर्व में स्थित है पर समाप्त होती है।
- रेखा ग-घ : यह रेखा बिन्दु 'ग' जो ग्राम तरहेसा से उत्तर पूर्व की ओर बढ़ती हुई ग्राम पाण्डू (ग्राम सं. 11) और ग्राम बसरिया (ग्राम सं. 22) की उत्तर पूर्वी सीमाओं के साथ होकर गुजरती है और बिन्दु 'घ' पर समाप्त होती है जो बसरिया के उत्तर पूर्व कोने में स्थित है।
- रेखा घ-ङ : यह रेखा ग्राम बसरिया के उत्तर पूर्व में स्थित बिन्दु 'घ' से प्रारम्भ होकर ग्राम बसरिया की पूर्वी सीमा से गुजरती हुई उक्त ग्राम की दक्षिण पूर्व कोने पर स्थित बिन्दु 'ङ' पर समाप्त होती है।
- रेखा ङ-च : यह रेखा बिन्दु 'ङ' जो ग्राम बसरिया (ग्राम सं. 22) के दक्षिण-पूर्व कोने से आरंभ होकर ग्राम लोचर (ग्राम सं. 23) के पूर्वी भाग से गुजरती है और ग्राम लोचर के दक्षिण पूर्व कोने में स्थित बिन्दु 'च' पर समाप्त होती है।
- रेखा च-छ : यह रेखा ग्राम लोचर के दक्षिण पूर्व में स्थित बिन्दु 'च' से आरंभ होकर उक्त ग्राम की दक्षिणी सीमा से गुजरती हुई इसकी दक्षिणी सीमा पर स्थित बिन्दु 'छ' पर समाप्त होती है।
- रेखा छ-ज : यह रेखा ग्राम लोचर (ग्राम सं. 23) के दक्षिणी सीमा पर स्थित बिन्दु 'छ' से आरंभ होकर उक्त ग्राम की दक्षिणी सीमा से गुजरकर ग्राम पगार (ग्राम सं. 19) तथा ग्राम प्रगार के दक्षिणी कोने पर स्थित बिन्दु 'ज' पर समाप्त होती है।
- रेखा ज-झ : यह रेखा ग्राम पगार की दक्षिणी कोने पर स्थित बिन्दु 'ज' से आरंभ होकर बिन्दु 'ज 1', 'ज 2', 'ज 3', 'ज 4', जो ग्राम पगार की दक्षिणी सीमा से होकर उक्त ग्राम के उत्तर की ओर बढ़कर बिन्दु 'ज 5' पर पहुँचकर फिर उक्त ग्राम के पूर्व की ओर बढ़ती हुई ग्राम पगार के पूर्व में स्थित बिन्दु 'ज 6' तक जाती है। फिर यह रेखा उत्तर पश्चिम की दिशा में बढ़ती हुई ग्राम काबेद (ग्राम सं. 20) के दक्षिण-पश्चिम में स्थित बिन्दु 'झ' पर समाप्त होती है।
- रेखा झ-ञ : यह रेखा ग्राम काबेद (ग्राम सं. 20) के दक्षिण-पश्चिम में स्थित बिन्दु 'झ' से आरंभ होकर ग्राम पगार (ग्राम सं. 19) से गुजरती है और ग्राम पगार की पूर्वी सीमा के निकट बिन्दु 'झ' पर समाप्त होती है।
- रेखा झ-ट-क : यह रेखा ग्राम पगार (ग्राम सं. 19) की पूर्वी सीमा पर स्थित बिन्दु 'झ' से आरंभ होकर ग्राम काबेद (ग्राम सं. 20) के उत्तर-पश्चिमी कोने से गुजरती हुई फिर उत्तर दिशा में ग्राम पाण्डू (ग्राम सं. 11) के पश्चिमी भाग से गुजरती है और अंततः ग्राम पाण्डू (ग्राम सं. 11) के उत्तर-पश्चिम कोने में स्थित बिन्दु 'क' पर समाप्त होती है।

[फा. सं.-43015/8/2006-पी.आर.आई.डब्ल्यू.-1]

एम. शहाबुद्दीन, अवर सचिव

New Delhi, the 30th August, 2007

**S.O. 2472.**—Whereas it appears to the Central Government that coal is likely to be obtained from the lands mentioned in the Schedule hereto annexed.

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisitions and Development) Act, 1957 (20 of 1957), the Central Government hereby gives notice of its intention to prospect for coal therein.

The Plan bearing number NTPC/CM/SEC-4(1)/KERANDARI/06/01(R 1) dated the 15th February, 2007, of the area covered by this notification can be inspected in the office of the General Manager, Coal Mining, NTPC, 1st Floor, PDIL Building, Sector-1, NOIDA-201301 or at the office of Additional General Manager (I/C), Pakri Barwadih, Chhatti Bariatu and Kerandari Coal Mining Projects, NTPC Ltd., Old Benaras Road, Nawabganj, Hazaribagh-825301 or at the office of Chief General Manager (Exploration Division), Central Mine Planning and Design Institute, Gondwana Place, Kanke Road, Ranchi or at the office of the Coal Controller, 1 Council House Street, Kolkata or at the office of the District Collector, Distt. Hazaribagh, Jharkhand.

All persons interested in the land covered by this notification shall deliver all maps, chart and other documents referred in Sub-section (7) of Section 13 of the said Act to the Additional General Manager (I/C), Chhatti Bariatu and Kerandari Coal Mining Projects, NTPC Ltd. Old Benaras Road, Nawabganj, Hazaribagh-825301 within ninety days from the date of publication of this notification in the Official Gazette.

**SCHEDULE****Kerandari Coal Mining Block****District Hazaribagh, Jharkhand**

**Plan No. : NTPC/CM/SEC 4-(1)/KERANDARI/06/01(R1)**  
**dated 15th February, 2007**

Sl. No.	Village	Thana	Village num-ber	District	Area (in hectare approxi-mately)	Area (in acres approxi-mately)	Re-marks
1.	Tarhessa	Keradari	10	Hazaribagh	17.29	42.70	Part
2.	Pandu	Keradari	11	Hazaribagh	168.75	416.81	Part
3.	Pagar	Keradari	19	Hazaribagh	190.86	471.42	Part
4.	Kabed	Keradari	20	Hazaribagh	40.74	100.63	Full
5.	Baledeori	Keradari	21	Hazaribagh	55.65	137.46	Full
6.	Basaria	Keradari	22	Hazaribagh	103.93	256.71	Full
7.	Lochar	Keradari	23	Hazaribagh	76.78	189.65	Part
Total area					654.00 (hectares approxi-mately)	1615.38 (acres approxi-mately)	

**Boundary Description :**

**Line A-B :** The line starts from point "A" at the north-west corner of village Pandu

- (village No. 11), passes through southern part of the village Tarhessa (village No. 10) and ends at the point "B" near the eastern boundary of the village Tarhessa.
- Line B-C :** The line starts from point "B" near the eastern boundary of village Tarhessa (village No. 10), moves southward and ends at point 'C' at the south-east corner of village Tarhessa.
- Line C-D :** The line starts from point "C" near the South-east corner of the village Tarhessa, passes along north-eastern boundaries of village Pandu (village No. 11) and village Basarai (village No. 22) and ends at the point "D" on the north-east corner of village Basaria.
- Line D-E :** The line starts from point "D" on the north-east corner of village Basaria (village No. 22), passes along the eastern boundary of village Basaria and ends at point "E" on the south-east corner of the said village.
- Line E-F :** The line starts from point 'E' on the south-east corner of the village Basaria (village No. 22) passes through the eastern part of village Lochar (village No. 23) and ends at point "F" at south-east corner of the village Lochar (village No. 23)
- Line F-G :** The line starts from point "F" at south-east corner of the village Lochar (village No. 23) moves along the southern boundary of said village and ends at point "G" on the southern boundary itself.
- Line G-H :** The line starts from point "G" on the southern boundary on village Lochar (Village No. 23) moves along the southern boundaries of village Lochar (village No. 23) and village Pagar (village No. 19) and ends at point "H" on southern corner of village Pagar.
- Line H-I :** The line starts from point "H" on southern corner of village Pagar passes through the points "H 1", "H 2", "H 3", "H 4", near the southern boundary of the village Pagar moves northwards up to point "H 5" in the said village further moves eastwards up to point "H 6" in the said village, then moves in the north-west direction meeting at point "I" near the south-west corner of the village Kated (village No. 20).
- Line I-J :** The line starts from point "I" the south-west corner of village Kated (village No. 20) passes through village Pagar (village

No. 19) and ends at point "J" near the eastern boundary of the Village Pagar.

**Line J-K-A :**

The line starts from point "J" near the eastern boundary of the village Pagar (village No. 19) passes through the north-west corner of village Kated (village No. 20). Further moves towards north passing through the western part of village Pandu (village No. 11) and finally ends at point "A" at the north-west corner of village Pandu (village No. 11).

[F. No. 43015/8/2006-PRIW-1]

M. SHAHABUDEEN, Under Secy.

**श्रम और रोजगार मंत्रालय**

नई दिल्ली, 6 अगस्त, 2007

**का.आ. 2473.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डीजल कोम्पोनेन्ट वर्क्स हॉस्पिटल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं.-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 610/2k5) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-08-07 को प्राप्त हुआ था।

[सं. एल-41012/139/2004-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

**MINISTRY OF LABOUR AND EMPLOYMENT**

New Delhi, the 6th August, 2007

**S.O. 2473.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 610/2k5 of the Central Government Industrial Tribunal-Cum-Labour Court-II Chandigarh as shown in the Annexure in the Industrial Dispute between the management of Diesel Components Works Hospital and their workmen, received by the Central Government on 06-08-2007.

[No. L-41012/139/2004-IR(B-I)]

AJAY KUMAR, Desk Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,  
CHANDIGARH**

**Presiding Officer :** Shri Kuldip Singh

**Case No. I. D. No. 610/2k5.**

**Registered on 24-08-2005**

**Date of Decision 20-10-2006.**

Km. M. G. Welsley C/o Shri Tek Chand Sharma,  
Vice President, INBEC, 25, Sant Nagar,  
Civil Lines, Ludhiana

Petitioner

Versus

The Medical Superintendent,  
Diesel Components Works (DCW),  
Hospital, Patiala.

Respondent

**APPEARANCE**

For the Workman : Nemo

For the Management : Mr. N. K. Zakhmi, Advocate

**AWARD**

The workman continues to be absent. In this Tribunal she has never appeared in person. She has not appeared continuously even through Counsel since 28th August, 2006. This shows that she has been left with no interest to prosecute this case. The case was being listed for the evidence of the workman since 12th June, 2006. In these last three dates the workman has not appeared for her statement. This further supports the view that she is no more interested in the case.

The appropriate Govt. vide their order No. L-41012/139/2004-IR (B-I) dated 29th December, 2004 has desired to know whether the action of the Management of DCW Hospital, Patiala in inflicting the disproportionate punishment of removal from service of Km. M. G. Welsley, Ex-Staff Nurse w.e.f. 24th Feb., 2003 was just and legal and if not to what relief the workman was entitled to and from which date. On record there is statement of claim filed by the workman and her affidavit. There is also on record the Written Statement of the Management and affidavits of their witnesses namely Dr. Latha Ramalingam and Dr. Mool Narayan. The Management has also placed on record the photo copy of the inquiry proceedings. However the parties did not have the opportunity to cross examine the witnesses of the opposite side. The claim of the workman has been denied by the workman, by their Written Statement. According to them the workman remained unauthorizedly absent from duty for which the inquiry was held against her and she was removed from service after holding the disciplinary proceedings against her and after giving her full opportunity to defend her case. According to them the punishment awarded was not disproportionate to the mis-conduct of the workman.

As stated earlier the workman has not appeared in the case to admit or deny the claim made by her in the Claim Petition and in the Written Statement. She has also not produced any evidence to support her claim. Therefore, there is nothing on record to show that the punishment awarded to the workman was disproportionate to the mis-conduct committed by the Management. As such she is not entitled to any relief. The reference is replied accordingly. Let a copy of this award be sent to the appropriate Govt. for necessary action and the file be consigned to records after due completion.

KULDIP SINGH, Presiding Officer

नई दिल्ली, 6 अगस्त, 2007

का.आ. 2474.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चम्पारण

क्षेत्रीय ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण पटना के पंचाट (संदर्भ संख्या 30/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06-08-07 को प्राप्त हुआ था।

[सं. एल-12012/120/2006-आईआर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 6th August, 2007

**S.O. 2474.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2007) of the Central Government Industrial Tribunal-Cum-Labour Court, Patna as shown in the Annexure in the Industrial Dispute between the management of Champaran Kshetriya Gramin Bank and their workmen, received by the Central Government on 06-08-2007.

[No. L-12012/120/2006-IR (B-I)]

AJAY KUMAR, Desk Officer

**ANNEXURE**

**BEFORE THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL, SHRAM BHAWAN, BAILEY ROAD, PATNA.**

**Reference No. 3 (C) of 2007.**

Between the Management of Champaran Kshetriya Gramin Bank, Motihari and their workman Shri Hari Lal Mahato, Clerk-cum-Cashier, Panchpokhari Branch, Champaran.

For the Management : Shri R. C. Jha, Officer, Uttar Bihar Kshetriya Gramin Bank, Muzaffarpur.

For the Workman : Shri B. Prasad, Authorised Representative.

Present : Vasudeo Ram, Presiding Officer, Industrial Tribunal, Patna.

**AWARD**

Patna the 30th July, 2007

By adjudication order No. L-12012/120/2006-IR (B-I) dated the 2nd February, 2007 the Government of India, Ministry of Labour, New Delhi under clause (d) of Sub-Section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called 'the Act) for brevity) referred the following dispute between the management of Champaran Kshetriya Gramin Bank, Motihari and their workman Shri Hari Lal Mahatto, Clerk-Cum-Cashier, Panchpokhari Branch represented by the General Secretary, Champaran Kshetriya Gramin Bank Employees Association for adjudication to this Tribunal on the following.

"Whether the action of the management of Champaran Kshetriya Gramin Bank, Motihari in inflicting punishment i.e. lowering down of two stages of basic pay for two years on the part of Sri Hari Lal Mahato, Clerk-cum-Cashier, Panchpokhari Branch at Champaran Kshetriya Gramin Bank is legal & justified & expedient? if not what relief Shri Hari Lal Mahatto is entitled to?"

2. The contention of the workman as per the statement of claim filed on behalf of the workman is that he worked from 9-9-1997 to 26-7-2003 at Panchpokhari Branch of Champaran Kshetriya Gramin Bank as Clerk-cum-Cashier. While posted at Panchpokhari Branch he was required to bring Rs. One Lac Cash from Nodal Branch, Dhaka of Champaran Kshetriya Gramin Bank on 2-11-1998. Prior to bringing the currency notes Rs. One Lac, the Manager of Panchpokhari Branch had informed the Manager of Champaran Kshetriya Gramin Bank, Nodal Branch, Dhaka on 31-10-1998 regarding cash requirement. The management has also informed that a Clerk-cum-Cashier would be deputed to bring Cash on 2-11-1998. Accordingly, Shri Hari Lal Mahato was deputed to bring the Cash. As per practice of the Bank a Messenger is also deputed with the Cashier to bring the Cash. As the Messenger was absent on 2-11-1998, Shri Hari Lal Mahato was instructed to perform the duty. Further, the contention of the workman is that as per instruction he reached Nodal Branch, Dhaka at about 1 P. M. on 2-11-1998 on his Motor Cycle and asked for the Cash. The Manager of Nodal Branch, Dhaka in place of hand over Cash handed over a Cheque of Rs. One Lac of Central Bank of India, Dhaka Branch with the instruction to give information regarding receipt of Cash from Central Bank of India Dhaka Branch so that entry in the Pass-Book may be made regarding withdrawal. The workman requested for a messenger but that was not provided to him by the Nodal Branch. The workman went to Central Bank of India, took payment of the Cheque and kept the money in Dicky. He requested Rameshwar Singh, Clerk-cum-Cashier of Shikarganj Branch to accompany and they came to Nodal Branch, Dhaka. Shri Rameshwar Singh got down and went inside the Bank. The workman locked his Motor-Cycle and went inside the Bank. After giving information he came out with Pass-Book within one minute. He found the lock of Dicky was broken and the money was stolen away. On alarm raised by him so many persons assembled there. The workman went to Police Station and lodged F. I. R. After investigation the Police submitted final form which was accepted by the Court. The management issued a notice to Show-Cause to the workman and after holding domestic enquiry held the workman guilty and punished him by lowering down his basic pay by two stages for a period of two years.

3. The contention of the management is that the theft of Rs. One Lac took place from the Dicky of Motor-Cycle of Shri Hari Lal Mahato due to negligence. Shri Mahato parked Motor-Cycle without deputing any body to keep watch over the dicky. That is sufficient proof of his gross negligence. Having found serious lapses on the part of Shri Mahato the Management issued charge-sheeted and started domestic enquiry. After completing the departmental enquiry the disciplinary authority awarded punishment of reduction of pay by two stages for a period of two years and to pay the amount of loss caused to the

Bank. The appellate authority after consideration reduced the amount of recovery from one lac to Rs. 27,466/- only leaving the punishment of lowering down basic pay by two stages for two years intact. According to the management the workman is not entitled to any relief and the reference be decided in favour of the management.

4. Upon the pleading of the parties and the terms of reference the following points arise out for decision :

- (i) Whether the action of the management of Champaran Kshetriya Gramin Bank, Motihari in inflicting punishment of lowering down basic pay of the workman by two stages for two years is legal, justified and expedient?
- (ii) Whether the workman is entitled to any relief, if yes, to what relief he is entitled ?

### FINDINGS

#### Point No. (i) :

5. The management has examined one witness namely Laxmi Narain Tiwary (M. W. 1) Shri Tiwary was the Branch Manager in Dhaka Nodal Branch of Champaran Kshetriya Gramin Bank when the incident of theft of one lac from the dicky of Motor-Cycle of Shri Hari Lal Mahato is said to have taken place. The workman has examined himself in support of his case. The facts of the case are admitted. On analysing the facts it came out that the authorities of Panchpokhari Branch deputed Shri Mahato to bring one lac Cash from Dhaka Nodal Branch but did not provide any companion/messenger to go with him. This was a lapse on the part of the Bank administration. Secondly, the Nodal Branch was informed two days before that Panchpokhari Branch will require one lac Cash on 2-11-1998 yet the Nodal Branch did not arrange for Cash though Cash was available in Nodal Branch and handed over a Cheque of Central Bank of India with instruction to intimate on receipt of Cash from Central Bank of India. Thirdly, the Nodal Branch also did not provide any messenger to go with Shri Mahato to Central Bank of India, Dhaka Branch to encash the cheque. Incidentally, one Shri Rameshwar Singh, Clerk-cum-Cashier of Shikarganj Branch met Shri Mahato in Central Bank of India and accompanied him upto the Nodal Branch. As instructed by the Nodal Branch Shri Mahato had to inform and accordingly he went inside the Nodal branch to inform. When no body was with him I fail to understand as to whom Shri Mahato would have deputed to keep watch over the money. There was one alternate for Shri Mahato and that was to take the Cash with him inside the Nodal Bank when he went in the Nodal Bank to give information.

6. Keeping in view the circumstances discussed above I am of the opinion that the carelessness or the negligence on the part of Shri Mahato is meagre. The workman in the statement has stated that the management Bank has been compensated Rs. 72,534.00 by the insurance company and the rest Rs. 27,466 is to be deposited by

Shri Mahato. I am tempted to mention here that no action has been taken against the authorities who deputed Shri Mahato to bring the cash but did not provide any messenger to accompany him. Above all the loss caused to the management has been compensated partly by insurance company and partly by the workman. When the workman has also compensated the loss I find no reason and justification in imposing another punishment of lowering down basic pay by two stages for two years. Under the circumstances discussed above I find and hold that the action of the management of Champaran Kshetriya Gramin Bank in inflicting punishment of lowering down basic pay by two stages for two years is illegal and unjust and not expedient. This point is accordingly decided.

**Point No. (ii):**

7. Keeping in view the discussions made above and the findings arrived at on point No.(i) I find that the management must not implement the punishment of lowering down basic pay of the workman Shri Mahato by two stages for two years inflicted by the management. This point is decided accordingly.

8. In the result I find and hold that the action of the management of Champaran Kshetriya Gramin Bank, Motihari in inflicting punishment of lowering down the basic pay of Shri Hari Lal Mahato, Clerk-cum-Cashier, Panchpokhari Branch by two stages for two years is illegal, unjust and not expedient. The management is directed not to implement the said punishment. If the deductions are being made in order to implement the said punishment, the amount deducted must be paid back to Shri Mahato within two months from the date of publication of the Award.

9. And this is my Award.

VASUDEO RAM, Presiding Officer

नई दिल्ली, 7 अगस्त, 2007

**का.आ. 2475.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 64/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-9-2007 को प्राप्त हुआ था।

[सं. एल-12012/253/1998-आई आर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 7th August, 2007

**S.O. 2475 .**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State

Bank of India and their workmen, received by the Central Government on 07-8-2007.

[No. L-12012/253/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
CHENNAI**

Wednesday, the 31st January, 2007

**PRESENT**

**K. Jayaraman, Presiding Officer**

**Industrial Dispute No. 64/2004**

**(Principal Labour Court CGID No. 86/99)**

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

**BETWEEN**

Sri M. Krishnamoorthy : I Party/Petitioner

**AND**

The Assistant General Manager, : II Party/Management  
State Bank of India,  
Z. O. Chennai.  
Madurai

**APPEARANCE**

For the Petitioner : Sri V. S. Ekambaram,  
Authorised Representative

For the Management : M/s. D. Mukundan,  
Advocates

**AWARD**

1. The Central Government Ministry of Labour, vide Order No. L-12012/253/98-IR (B-I) dated 05-02-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 86/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 64/2004.

2. The Schedule mentioned in that order is as follows:

“Whether the demand of the workman Shri M. Krishnamoorthy, wait list No. 246 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Karunga branch from 23-02-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Karungal branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 23-02-1982, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Karungal branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of

para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bonafide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 246 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary

employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 246 he was not appointed. The said settlements were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the

Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 246 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

#### Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or

notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers

etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16

of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 10 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is

a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners

were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 1 LLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even

those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated

in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for

restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 *STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS* wherein the Supreme Court has held that “now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the “decision reported in 1997 II SCC 1 *ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS* wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. “So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity.” Therefore,

learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 *HIMANSHU KUMAR VIDYARTHI & ORS. Vs. STATE OF BIHAR AND ORS.* wherein the Supreme Court has held that “they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary.” He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that “Under Section 25G of the I.D. Act retrenchment procedure following principle of ‘last come—first go’ is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. “Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 *SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI*, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance. if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right.” Further, it has also held that “it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.” Further,

the Supreme Court while laying down the law, has clearly held that “unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement,

the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

#### Witnesses Examined:

For the Petitioner	WW1 Sri M. Krishnamoorthy
	WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan
	MW2 Sri M. Perumal

**Documents Marked :—**

Ex. No.	Date	Description
W1	1-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-4-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies And filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do massengerial work.
W9	Nil	Xerox copy of the service certificate issued by Karungal Branch.
W10	Nil	Xerox copy of the service certificate issued by Karungal branch.
W11	23-02-82	Xerox copy of the call letter from Rspndent to Petitioner.
W12	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respodent/Bank regarding recruitment to subordinate care & service conditions.
W13	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—V. Muralikannan.
W15	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj.
W16	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—J. Velmurugan.
W17	17-03-97	Xerox copy of the service particulars—J. Velmurugan.

Ex. No.	Date	Description
W18	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W19	31-03-97	Xerox copy of the appointment order to Sri. G. Pandi.
W20	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W21	13-02-95	Xerox copy of the Madurai Module Circular letter about Engaging temporary employees from the panel of wait list.
W22	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W23	09-07-92	Xerox copy of Minutes of the Bipartite meeting.
W24	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W25	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W26	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

**For the Respondent/Management :—**

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Madurai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 7 अगस्त, 2007

**का.आ. 2476.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 72/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/287/1998-आई आर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 7th August, 2007

**S.O. 2476.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 72/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 7-8-2007.

[No. L-12012/287/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

#### PRESENT

**K. Jayaraman, Presiding Officer**

**Industrial Dispute No. 72/2004**

[Principal Labour Court CGID No. 144/99]

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen.]

#### BETWEEN

Sri E. Chellappan : I Party/Petitioner

#### AND

The Assistant General Manager, : II Party/Management  
State Bank of India,  
Z. O. Madurai.

#### APPEARANCES

For the Petitioner : Sri V. S. Ekambaram,  
Authorised Representative

For the Management : Mr. D. Mukundan,  
Advocate.

#### AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/287/98-IR (B-I) dated 11-02-1999 has

referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 144/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and counter statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 72/2004.

2. The Schedule mentioned in that order is as follows:

“Whether the demand of the workman Shri E. Chellappan, wait list No. 289 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Karingal branch from 22-02-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Karingal branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 22-02-1982, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Nagercoil branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he

need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff

Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 289 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 289 he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of

permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 289 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

#### Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V/A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to

MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates

While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 10 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes

post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 11 LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously, is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the

first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into

the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K. V. VIJESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose

name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time

of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the "decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." "Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts,

their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the

Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the

Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

#### Witnesses Examined:

For the Petitioner	WW1 Sri E. Chellappan WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri M. Perumal

#### Documents Marked :—

Ex.No.	Date	Description
W1	1-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.

Ex. No.	Date	Description	Ex. No.	Date	Description
W3	24-4-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.	W19	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February. 2005 wait list No. 395 of Madurai Circle
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex.W4.	W20	13-02-95	Xerox copy of Madurai Module Circular letter about engaging temporary employees from the panel of wait list
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.	W21	13-02-95	Xerox copy of the Head Officer circular No. 28 regarding Norms for sanction of messenger staff
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up to vacancies of messenger posts.	W22	09-7-92	Xerox copy of the Minutes of the Bipartite meeting
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.	W23	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.	W24	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants
W9	14-08-96	Xerox copy of the service certificate issued by Karungal Branch.	W25	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.
W10	20-11-97	Xerox copy of the service certificate issued by Karungal branch.	<b>For the Respondent/Management :—</b>		
W11	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions.	Ex. No.	Date	Description
W12	Nil	Xerox copy of the Reference book on Staff matters Vol III consolidated upto 31-12-95.	M1	17-11-87	Xerox copy of the settlement.
W13	6-3-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—V. Muralikannan	M2	16-07-88	Xerox copy of the settlement.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj	M3	27-10-88	Xerox copy of the settlement.
W15	06-03-97	Xerox copy of the letter from Madurai zonal office For interview of messenger post—K Subburaj	M4	09-01-91	Xerox copy of the settlement.
W16	17-03-97	Xerox copy of the service particulars—J. Velmurugan	M5	30-07-96	Xerox copy of the settlement.
W17	17-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi	M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
W18	31-03-97	Xerox copy of the appointment order to Sri. G. Pandi	M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
			M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
			M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
			M10	Nil	Xerox copy of the wait list of Madurai Module.
			M11	25-10-99	Xerox copy of the order passed in CMP No.16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 7 अगस्त, 2007

**का.आ. 2477.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 65/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/260/1998-आई आर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 7th August, 2007

**S.O. 2477.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 07-8-2007.

[No.L-12012/260/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

#### PRESENT

**K. Jayaraman, Presiding Officer**

**Industrial Dispute No. 65/2004**

**(Principal Labour Court CGID No. 87/99)**

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

#### BETWEEN

Sri K. Murugan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management  
State Bank of India,  
Z. O. Madurai.

#### APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,  
Authorised Representative

For the Management : Mr. D. Mukundan,  
Advocate

#### AWARD

1. The Central Government, Ministry of Labour, vide Order No. L-12012/260/98-IR (B-I) dated 5-2-1999 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 87/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 65/2004.

2. The Schedule mentioned in that order is as follows:

“Whether the demand of the workman Shri K. Murugan, wait list No. 325 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Kuzhithurai branch from 14-2-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kuzhithurai branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. The Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Nungambakkam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97.

Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bonafide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated

17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 325 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 325 he was not appointed. The said settlements were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto

31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by Employment Exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 325 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

#### Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to

MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 10 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence

of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 11 LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the

first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should

look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507

A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJESH wherein the Supreme Court has held that "the only question which falls for determination

in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door

(c) he was not eligible and qualified for the post at the time of his appointment (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are

only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS

LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala

fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P. A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

#### Witnesses Examined :

For the Petitioner	WW1 Sri K. Murugan WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri M. Perumal

#### Documents Marked :

Ex. No.	Date	Description
W1	1-8-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.

Ex.No. Date	Description	Ex.No. Date	Description
W2 20-4-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.	W18 Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February. 2005 wait list No. 395 of Madurai Circle
W3 24-4-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.	W19 13-2-95	Xerox copy of the Madurai Module Circular letter about. Engaging temporary employees from the panel of wait list
W4 1-5-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.	W20 9-11-92	Xerox copy of the Head Officer circular No. 28 regarding norms for sanction of messenger staff
W5 20-8-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.	W21 9-7-92	Xerox copy of the Minutes of the Bipartite meeting
W6 15-3-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.	W22 9-7-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants
W7 25-3-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.	W23 7-2-96	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants
W8 Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do massengerial work.	W24 31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre
W9 Nil	Xerox copy of the service particulars of Petitioner issued by Kuzhithurai branch	<b>For the Respondent/Management :—</b>	
W10 Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions.	Ex.No. Date	Description
W11 Nil	Xerox copy of the Reference book on Staff matters Vol III consolidated upto 31-12-95.	M1 17-11-87	Xerox copy of the settlement.
W12 6-3-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.	M2 16-7-88	Xerox copy of the settlement.
W13 6-3-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.	M3 27-10-88	Xerox copy of the settlement.
W14 6-3-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.	M4 9-1-91	Xerox copy of the settlement.
W15 17-3-97	Xerox copy of the service particulars—J. Velmurugan.	M5 30-7-96	Xerox copy of the settlement.
W16 26-3-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.	M6 9-6-95	Xerox copy of the minutes of conciliation proceedings.
W17 31-3-97	Xerox copy of the appointment order to Sri. G. Pandi.	M7 28-5-91	Xerox copy of the order in W.P. No. 7872/91.
		M8 15-5-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
		M9 10-7-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
		M10 Nil	Xerox copy of the wait list of Madurai Module.
		M11 25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 7 अगस्त, 2007

**का.आ. 2478.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 66/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-9-2007 को प्राप्त हुआ था।

[सं. एल-12012/270/1998-आई आर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 7th August, 2007

**S.O. 2478.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 07-8-2007.

[No. L-12012/270/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CHAIRMAN, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

#### PRESENT

**K. Jayaraman, Presiding Officer**

**Industrial Dispute No. 66/2004**

**(Principal Labour Court CGID No. 88/99)**

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

#### BETWEEN

Sri D. Sahadevan : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management  
State Bank of India,  
Z. O. Madurai.

#### APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,  
Authorised Representative

For the Management : Mr. D. Mukundan,  
Advocate

#### AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/270/98-IR (B-I) dated 5-2-1999 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 88/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 66/2004.

2. The Schedule mentioned in that order is as follows:

“Whether the demand of the workman Shri. D. Sahadevan, wait list No. 292 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Kothanallur branch from 21-12-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject-matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kothanallur branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 21-12-84, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Kalkulam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97.

Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bonafide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated

17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject-matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 292 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 289 he was not appointed. The said settlements were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto

31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 292 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

#### Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248

CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex.M10 was prepared on 2-5-92 but

there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not inconformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal

clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's

case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under section 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he

was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.F. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a

representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of

the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAGNATHAN ORS. PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination

acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment (d) his record of service since his

appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the "decision reported in 1997 II SEC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." "Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on

the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore,

is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Article 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this

stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

#### Witnesses Examined:

For the Petitioner	WW1 Sri D. Sagadevan
	WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan
	MW2 Sri M. Perumal

#### Documents Marked :—

Ex. No.	Date	Description
W1	1-8-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-4-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-4-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.

Ex. No.	Date	Description	Ex. No.	Date	Description
W4	1-5-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.	W22	26-3-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W5	20-8-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.	W23	31-3-97	Xerox copy of the appointment order to Sri. G. Pandi.
W6	15-3-97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up to vacancies of messenger posts.	W24	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February. 2005 wait list No. 395 of Madurai Circle.
W7	25-2-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding indentification of massenger vacancies and filling them before 31-3-97.	W25	13-2-95	Xerox copy of the Madurai Module Circular letter about. Engaging temporary employees from the panel of wait list.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.	W26	9-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W9	Nil	Xerox copy of the service certificate issued by Kothanallur Branch.	W27	9-7-92	Xerox copy of the Minutes of the Bipartite meeting.
W10	Nil	Xerox copy of the service certificate issued by Kalkulam branch.	W28	9-7-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W11	24-7-97	Xerox copy of the service certificate issued by Kalkulam branch.	W29	7-2-06	Xerox copy of the local Head Office circular about Conversinn of part time employees and redesignate them as general attendants.
W12	28-7-97	Xerox copy of the service certificate issued by Kalkulam branch.	W30	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.
W13	28-7-97	Xerox copy of the service certificate issued by Kalkulam branch.	<b>For the Respondent/Management :—</b>		
W14	30-7-97	Xerox copy of the service certificate issued by Kottar branch.	Ex. No.	Date	Description
W15	19-4-97	Xerox copy of the petty cash voucher of Kalkulam branch signed by Petitioner.	M1	17-11-87	Xerox copy of the settlement.
W16	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respodent/Bank regarding recruitment to subordinate care & service conditions.	M2	16-7-88	Xerox copy of the settlement.
W17	Nil	Xerox copy of the Reference book on Staff matters Vol III consolidated upto 31-12-95.	M3	27-10-88	Xerox copy of the settlement.
W18	6-3-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.	M4	9-1-91	Xerox copy of the settlement.
W19	6-3-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.	M5	30-7-96	Xerox copy of the settlement.
W20	6-3-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.	M6	9-6-95	Xerox copy of the minutes of conciliation proceedings.
W21	17-3-97	Xerox copy of the service particulars—J. Velmurugan.	M7	28-5-91	Xerox copy of the order in W.P. No. 7872/91.
			M8	15-5-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
			M9	10-7-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
			M10	Nil	Xerox copy of the wait list of Madurai Module.
			M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 7 अगस्त, 2007

**का.आ. 2479.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 67/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/252/1998-आई आर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 7th August, 2007

**S.O. 2479.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 67/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 7-8-2007.

[No. L-12012/252/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

#### PRESENT

**K. Jayaraman, Presiding Officer**

**Industrial Dispute No. 67/2004**

**(Principal Labour Court CGID No. 144/99)**

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

#### BETWEEN

Sri T. Venu : I Party/Petitioner

#### AND

The Assistant General Manager, : II Party/Management  
State Bank of India,  
Z. O. Madurai.

#### APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,  
Authorised Representative

For the Management : M/s. D. Mukundan,  
Advocates

#### AWARD

1. The Central Government, Ministry of Labour, vide Order No. L-12012/252/98-IR (B-I) dated 05-02-1999 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 89/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 67/2004.

2. The Schedule mentioned in that order is as follows:

“Whether the demand of the workman Shri M. Krishnamoorthy, wait list No. 358 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Triplicane branch from 18-05-1974. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Tenkasi branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 18-05-1974, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Tenkasi branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner

raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of Para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bonafide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated

17-11-87, 16-7-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 358 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 358 he was not appointed. The said settlements were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent

messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998; the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 358 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

#### Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies. In subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared

on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 10 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal

clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service letter and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW 1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's

case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 ILLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Section 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/

Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the Federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting

workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement; since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of

the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive

examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/ temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his

appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the "decision reported in 1997 II SEC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on

the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore,

is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this

stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent /Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

#### Witnesses Examined:

For the Petitioner	WW1 Sri T. Velu
	WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan
	MW2 Sri M. Perumal

#### Documents Marked :

Ex.No.	Date	Description
W1	1-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.

Ex. No.	Date	Description	Ex. No.	Date	Description
W3	24-4-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.	W18	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex.W4.	W19	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February. 2005 wait list No. 395 of Madurai Circle.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.	W20	13-02-95	Xerox copy of Madurai Module Circular letter about. Engaging temporary employees form the panel of wait list.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up to vacancies of messenger posts.	W21	09-11-92	Xerox copy of the Head Officer circular No. 28 rgarding Norms for sanction of messenger staff.
W7	25-03-97	Xeros copy of the circular of Respondent/Bank to all Branches regarding indentification of massenger vacancies and filling them before 31-3-97.	W22	09-11-92	Xerox copy of the Minutes of the Bipartite meeting.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do massengerial work.	W23	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W9	28-02-80	Xerox copy of the service certificate issued by Tenkasi Branch.	W24	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesindegate them as general attendants.
W10	15-07-97	Xerox copy of the service certificate issued by Tenkasi branch.	W25	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.
W11	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respodent/Bank regarding recruitment to subordinate cadre & service conditions.	<b>For the Respondent/Management :</b>		
W12	Nil	Xerox copy of the Reference book on Staff matters Vol III consolidated upto 31-12-95.	Ex. No.	Date	Description
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—V. Muralikannan.	M1	17-11-87	Xerox copy of the settlement.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—K. Subburaj.	M2	16-07-88	Xerox copy of the settlement.
W15	06-03-97	Xerox copy of the call letter from Madurai zonal office For interview of messenger post—J. Velmurugan.	M3	27-10-88	Xerox copy of the settlement.
W16	17-03-97	Xerox copy of the service particulars—J. Velmurugan.	M4	09-01-91	Xerox copy of the settlement.
W17	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.	M5	30-07-96	Xerox copy of the settlement.
			M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
			M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
			M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
			M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
			M10	Nil	Xerox copy of the wait list of Madurai Module.
			M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 7 अगस्त, 2007

**का.आ. 2480.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 69/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/373/1998-आई आर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 7th August, 2007

**S.O. 2480.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 69/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 07-8-2007.

[No. L-12012/373/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

#### PRESENT

**K. Jayaraman, Presiding Officer**

**Industrial Dispute No. 69/2004**

**(Principal Labour Court CGID No. 92/99)**

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

#### BETWEEN

Sri G. Subramanian : I Party/Petitioner

AND

The Assistant General Manager, : II Party/Management  
State Bank of India,  
Z. O. Madurai.

#### APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,  
Authorised Representative

For the Management : M/s. D. Mukundan,  
Advocate

#### AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/373/98-IR (B-I) dated 05-02-1999 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 92/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 69/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri G. Subramanian, wait list No. 302 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Periakulam branch from 15-11-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Periakulam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 15-11-1984, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Periakulam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from

1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bonafide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated

17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 302 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 302 he was not appointed. The said settlements were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto

31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 302 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

#### Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Section 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Exs.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to

MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Article 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M 10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence

of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I. Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the

first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into

the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K. V. VIJESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears

in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no malafide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with malafide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time

of his appointment (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the "decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity. "Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts,

their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the

Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the

Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

#### Witnesses Examined :—

For the Petitioner	WW1 Sri G. Subramanian WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri M. Perumal

#### Documents Marked :—

Ex. No.	Date	Description
W1	1-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.

Ex. No.	Date	Description	Ex. No.	Date	Description
W3	24-4-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.	W19	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex.W4.	W20	13-02-95	Xerox copy of Madurai Module Circular letter about, Engaging temporary employees from the panel of wait list.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.	W21	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.	W22	09-7-92	Xerox copy of the Minutes of the Bipartite meeting.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.	W23	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.	W24	07-02-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W9	Nil	Xerox copy of the service certificate issued by Periyakulam Branch.	W25	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.
W10	14-02-98	Xerox copy of the service certificate issued by Periyakulam branch.	<b>For the Respondent/Management :—</b>		
W11	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respodent/Bank regarding recruitment to subordinate cadre & service conditions.	Ex. No.	Date	Description
W12	Nil	Xerox copy of the Reference book on Staff matters Vol III consolidated upto 31-12-95.	M1	17-11-87	Xerox copy of the settlement.
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.	M2	16-07-88	Xerox copy of the settlement.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.	M3	27-10-88	Xerox copy of the settlement.
W15	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velumurugan.	M4	09-01-91	Xerox copy of the settlement.
W16	17-03-97	Xerox copy of the service particulars—J. Velmurugan.	M5	30-07-96	Xerox copy of the settlement.
W17	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.	M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
W18	31-03-97	Xerox copy of the appointment order to Sri. G. Pandi.	M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
			M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
			M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
			M10	Nil	Xerox copy of the wait list of Madurai Module.
			M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 7 अगस्त, 2007

**का.आ. 2481.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 81/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/524/1998-आई आर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 7th August, 2007

**S.O. 2481.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 81/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 7-8-2007.

[No. L-12012/524/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

#### PRESENT

**K. Jayaraman, Presiding Officer**

**Industrial Dispute No. 81/2004**

(Principal Labour Court CGID No. 227/99)

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

#### BETWEEN

**Sri A. Murugesan** : I Party/Petitioner

#### AND

**The Assistant General Manager,** : II Party/Management  
State Bank of India,  
Z. O. Madurai.

#### APPEARANCE

For the Petitioner : **Sri V. S. Ekambaram,**  
Authorised Representative

For the Management : **Mr. D. Mukundan,**  
Advocate

#### AWARD

1. The Central Government Ministry of Labour, vide Order No. L-12012/524/98-IR (B-I) dated 19-03-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 227/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 81/2004.

2. The Schedule mentioned in that order is as follows:

“Whether the demand of the workman Shri M. Murugesan, wait list No. 307 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Rameshwaram branch from 8-08-1981. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Rameshwaram branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 8-08-1981, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Rameshwaram branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his

non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bonafide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said

settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 307 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 307 he was not appointed. The said settlements were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary

employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category. Thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 307 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

#### Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Sections 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V. A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to

MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M10 namely wait list is not in conformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence

of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I. Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the

first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being good will between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOPWORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into

the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VJEEESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears

in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time

of his appointment (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the "decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts,

their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the

Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bonafide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the

Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

#### Witnesses Examined :—

For the Petitioner	WW1 Sri A. Murugesan WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri M. Perumal

#### Documents Marked :—

Ex. No.	Date	Description
W1	1-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.

Ex. No.	Date	Description	Ex. No.	Date	Description
W3	24-4-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.	W19	31-03-97	Xerox copy of the appointment order to Sri. G. Pandi
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.	W20	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.	W21	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai About filling up to vacancies of messenger posts.	W22	09-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.	W23	09-07-92	Xerox copy of Minutes of the Bipartite meeting
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.	W24	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants
W9	Nil	Xerox copy of the service certificate issued by Rameshwaram Branch.	W25	07-02-06	Xerox copy of the local Head Office Circular about Conversion of part time employees and redesignate them as general attendants
W10	Nil	Xerox copy of the service certificate issued by Rameshwaram branch.	W26	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre
W11	17-02-96	Xerox copy of the petty cash vouchers.	<b>For the Respondent/Management :—</b>		
W12	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care & service conditions.	Ex. No.	Date	Description
W13	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95	M1	17-11-87	Xerox copy of the settlement.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan	M2	16-07-88	Xerox copy of the settlement.
W15	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj	M3	27-10-88	Xerox copy of the settlement.
W16	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan	M4	09-01-91	Xerox copy of the settlement.
W17	17-03-97	Xerox copy of the service particulars—J. Velmurugan	M5	30-07-96	Xerox copy of the settlement.
W18	26-03-97	Xerox copy of the letter advising selection of parttime Menial—G. Pandi	M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
			M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
			M8	15-05-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
			M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
			M10	Nil	Xerox copy of the wait list of Madurai Module.
			M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 7 अगस्त, 2007

**का.आ. 2482.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 70/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/286/1998-आई आर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 7th August, 2007

**S.O. 2482.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 70/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 7-8-2007.

[No. L-12012/286/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

#### PRESENT

**K. Jayaraman, Presiding Officer**

**Industrial Dispute No. 70/2004**

**(Principal Labour Court CGID No. 142/99)**

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

#### BETWEEN

Sri P. Mookiah : I Party/Petitioner

#### AND

The Assistant General Manager, : II Party/Management  
State Bank of India,  
Z. O. Madurai.

#### APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,  
Authorised Representative

For the Management : Mr. D. Mukundan,  
Advocate

#### AWARD

1. The Central Government, Ministry of Labour, vide Order No. L-12012/286/98-IR (B-I) dated 11-2-1999 has referred this dispute earlier to the Tamil Nadu Principal

Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 142/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 70/2004.

2. The Schedule mentioned in that order is as follows :

“Whether the demand of the workman Shri P. Mookiah, wait list No. 316 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Bodinayakanur branch from 5-11-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Bodinayakanur branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 5-11-82, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Nungambakkam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required

any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bonafide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff

Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 316 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 316 he was not appointed. The said settlements were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of

permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 316 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

#### Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees, Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to

MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 10 namely wait list is not inconformity with the instructions of Ex.M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No.11932/91 in W.P.No.7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy

was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence

of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the

first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into

the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object, in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears

in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time

of his appointment (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the "decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts,

their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors. "Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the

Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the

Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2:

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

#### Witnesses Examined:

For the Petitioner	WW1 Sri P. Mookaiah
	WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan
	MW2 Sri M. Perumal

#### Documents Marked :—

Ex. No.	Date	Description
W1	1-8-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-4-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-4-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.

Ex. No.	Date	Description	Ex. No.	Date	Description
W4	1-5-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.	W22	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February. 2005 wait list No. 395 of Madurai Circle.
W5	20-8-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.	W23	13-2-95	Xerox copy of Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W6	15-3-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up to vacancies of messenger posts.	W24	9-11-92	Xerox copy of the Head Office circular No. 28 regarding Norms for sanction of messenger staff.
W7	25-3-97	Xerox copy of the circular of Respondent/Bank to all branches regarding identification of messenger vacancies and filling them before 31-3-97.	W25	9-7-92	Xerox copy of the minutes of the Bipartite meeting.
W8	Nil	Xerox copy of the instruction in reference book on staff about casuals not to be engaged at office/branches to do messengerial work.	W26	9-7-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W9	Nil	Xerox copy of the service certificate issued by Bodinayakanur work.	W27	7-2-06	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W10	26-7-84	Xerox copy of the service certificate issued by Theni branch.	W28	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.
W11	Nil	Xerox copy of the service issued by Theni branch.	<b>For the Respondent/Management :—</b>		
W12	Nil	Xerox copy of the service certificate issued by Bodinayakanur branch.	Ex. No.	Date	Description
W13	14-10-82	Xerox copy of the letter from District Employment Office to Petitioner.	M1	17-11-87	Xerox copy of the settlement.
W14	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions.	M2	16-7-88	Xerox copy of the settlement.
W15	Nil	Xerox copy of the Reference book on Staff matters Vol III consolidated upto 31-12-95.	M3	27-10-88	Xerox copy of the settlement.
W16	6-3-97	Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—V. Muralikannan.	M4	9-1-91	Xerox copy of the settlement.
W17	6-3-97	Xerox copy of the call letter from Madurai Zonal Office For interview of messenger post—K. Subburaj.	M5	30-7-96	Xerox copy of the settlement.
W18	6-3-97	Xerox copy of the letter from Madurai Zonal Office for interview of messenger post—J. Velmurugan.	M6	9-6-95	Xerox copy of the minutes of conciliation proceedings.
W19	17-3-97	Xerox copy of the service particulars—J. Velmurugan.	M7	28-5-91	Xerox copy of the order in W.P. No. 7872/91.
W20	26-3-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.	M8	15-5-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
W21	31-3-97	Xerox copy of the appointment order to Sri. G. Pandi.	M9	10-7-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
			M10	Nil	Xerox copy of the wait list of Madurai Module.
			M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 7 अगस्त, 2007

का.आ. 2483.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जवाहर नवोदय विद्यालय के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बैंगलूर के पंचाट (संदर्भ संख्या 39/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-8-07 को प्राप्त हुआ था।

[सं. एल-42012/35/2006-आई. आर. (डी. यू.)]

सुरेन्द्र सिंह, डेस्क अधिकारी

New Delhi, the 7th August, 2007

**S.O. 2483.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 39/2006) Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Jawahar Navodaya Vidyalaya and their workman, which was received by the Central Government on 7-8-07.

[No. L-42012/35/2006-IR (DU)]

SURENDRA SINGH, Desk Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT  
“SHRAM SADAN”,  
III MAIN, III CROSS, II PHASE, TUMKUR ROAD,  
YESHWANTHPUR, BANGALORE-560 022**

Dated: 2nd August 2007

**PRESENT****Shri A. R. Siddiqui, Presiding Officer****C. R. No. 39/2006****I PARTY**Shri Sharanappa  
Adareddappa Sompur,At & Post Rajoor,  
Yelburga,  
Koppal,  
Karnataka State**II PARTY**The Principal,  
Jawahar Navodaya  
Vidyalaya,  
At & PO Kukunoor,  
Yelburga  
Koppal,  
Karnataka State**AWARD**

1. The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12012/35/2006(IR(DU) dated 20th September 2006 for adjudication on the following schedule:

**SCHEDULE**

“Whether the action of the Deputy Commissioner, Navodaya Vidyalaya Samithi, Hyderabad Region, Secunderabad(AP) in terminating the services of their workman Shri Sharanappa Addareddappa Sompur

w.e.f. 10-12-1990 is legal and justified? If not, to what relief the workman is entitled to?”

2. The case of the first party, as made out in the Claim Statement, in brief, is that he was working as a Driver in the Second party management w.e.f. 16-12-1987 till his services were illegally terminated from 10-12-1990, therefore, he worked with the management continuously for a period of more than 240 days in a calendar year and during the period from 16-12-1987 to 10-12-1990; that the management terminated his services without giving any opportunity, without issuing the charge sheet, without conducting enquiry and without following the principles of natural justice, much less, in violation of the provisions of Section 25F of the ID Act; that aggrieved by the management action, he raised an industrial dispute before the Assistant Labour Commissioner(Central), Mangalore and on the endorsement made by the said authority, the matter was taken up before the conciliation officer, Raichur and at the result of the conciliation proceedings having been failed and referred to the State Government, a reference No. 1/1994 came to be registered on the file of the Presiding Officer, Labour Court, Gulbarga and after due trial, an award dated 20-02-1999 was passed by the Labour Court, Gulbarga in favour of the first party to reinstate him in service with full back wages and other consequential benefits. That the management approached the Hon'ble High Court in Writ Petition No. 34910/00 and the Hon'ble High Court set aside the award passed by the Labour Court, Gulbarga on the ground that the appropriate Govt. to make reference in the matter was the Central Govt. and therefore, directed the first party to approach the proper forum in seeking reference of his dispute to the Central Labour Court and it is at the result of the reference made by the Central Govt. to this tribunal he is now before this tribunal. Therefore, he requested this tribunal to set aside the illegal termination order passed against him with relief of reinstatement, back wages and other consequential benefits.

3. The management by its counter statement however, contended that the first party was engaged as a daily wage Driver as and when there was a requirement particularly, when the regular driver was not available or out of duty for a short period between 16-12-1987 to 7-07-1988 and from 4-08-1989 to 10-12-1990; that the first party was not issued any appointment order as there was a regular driver working under the management. He was not promised with regularisation at any point of time and he was issued service certificates on his own request only to enable him to produce before any employer while seeking the job; that the first party did not work continuously for a period of 240 days and therefore, provisions of Section 25F of the ID Act are not applicable that this tribunal has got no jurisdiction to try the present case and the jurisdiction in the matter has been conferred upon Central Administrative Tribunal; that the first party did not approach the conciliation officer well within time as directed by the Hon'ble High Court in WP No. 34910/2000. In the last, the management contended that the allegation of the first party that he is still unemployed is not correct and requested this tribunal to reject the reference.

4. During the course of trial, the management examined one Mr. M. Shivanandamurthy, the Principal of the management school by filing his affidavit evidence, wherein he repeated the various contentions taken by the management in its Counter Statement. One of the relevant contention for the purpose of this case at Para 2 of the affidavit is to the effect that the first party was not formally appointed by issuing an appointment order and that he was engaged as a Driver between 04-08-1989 to 10-12-1990 only because the regular Driver by name Shri D.M. Naganur was kept under suspension and it is after the said regular driver was reinstated on 11-12-1990, the first party was not engaged, thereafter. In his cross examination he admitted that the first party worked with their school as a Driver on daily wage basis w.e.f. 16-12-1987 to 7-07-1988 and from 4-8-1989 to 10-12-1990. He denied the suggestion that the first party worked continuously during the said period drawing monthly salary of Rs. 700. He admitted that his Predecessors had given the service certificates to the first party and there is a vehicle (jeep) for the services of the institution. He admitted that they have not given any notice to the first party while terminating his services and that there was no allegations against the first party and no enquiry was conducted against him.

5. The first party also filed his affidavit evidence and in his further examination chief got marked 5 documents at EX.W1 to W5. In his cross examination it was elicited that apart from EX.W1 to W5, he has no other document to show that he was working as a Driver under the management and there was no order in writing to stop his services. It was elicited that EX.W1 to W5 are given to him on his requests and the suggestion made to him that he obtained those documents to get the job elsewhere is denied by him.

6. The documents produced by the first party at Ex.W1 to W3 are the aforesaid three service certificates dated 19-7-1986, 6-12-1989 and 14-7-1990. As per Ex.W1, he worked as a Jeep Driver with the management from 16-12-1987 to 07-07-1989. As per Ex.W2, he worked as a driver w.e.f. 04-08-1989 till the date the certificate was issued in his favour. As per Ex.W3, he worked from 04-08-1989 till 14-07-1990, the date on which certificate was issued. Ex.W4 is the attendance certificate in favour of the first party for having attended the Central Govt. Standing Counsel in connection with the WP Nos. 13929/89 & 15663/90 and Ex. W5 is the certificate dated 14-7-1995 showing his residence. Now, therefore, in the light of the above, and the schedule reference points, the main questions to be considered would be—

- (i) Whether the first party worked with the management as a driver continuously for a period of 240 days & more during 12 calendar months preceding the date of termination and if so?
- (ii) Whether the action of the management in terminating his services amounts to retrenchment and illegal termination under the provisions of Section 2(00) of the ID Act read with Section 25 F thereof. If so?
- (iii) To what relief the first party is entitled for?

7. Learned counsel for the management vehemently argued that the first party being engaged by the management only on temporary basis and on daily wages, that too, in the absence of a regular driver, there was no need for compliance of Section 25 F of the ID Act. He cited the following 3 rulings in support of his case.

1. 2006 SCC (L&S) 38
2. 2006 SCC (L&S) 47
3. 2005 SCC, (L&S) 609

8. Whereas, learned counsel for the first party argued that irrespective of the fact whether the first party was a temporary employee or a regular employee, he having worked continuously for a period of 240 days and more his case tantamounts to retrenchment and there being no compliance of Section 25F of the ID Act, it will be a case of illegal retrenchment rather illegal termination and in the result, termination order is liable to be set aside and the first party is entitled to the relief sought for.

9. After having gone through the records, I do not find substance in the arguments advanced for the management. The facts undisputed by the management in the counter statement as well as in the affidavit of MW1 at Para 2 referred to supra, are to the effect that the first party worked with the management as a driver on daily wage basis between 16-12-1987 to 7-7-1988 and then between 4-8-1989 to 10-12-1990. In order to appreciate the contentions of the respective parties, therefore, the only relevant question to be considered was whether the first party worked with the management continuously for a period of 12 months preceding the date of termination. Their Lordship of Supreme Court in a case reported in 2006 SCC(L&S)38, a decision quoted by the learned counsel for the management itself, have laid down the principle that the scope of enquiry before the Labour Court will be confined to only twelve months preceding the date of termination to decide the question of continuation of service for purpose of Section 25F of the ID Act. In the instant case as noted above, undisputedly the first party workman worked with the management in two spells i.e. in the first spell he worked with the management between 16-12-1987 and 7-7-1988 and between 4-08-1989 and 12-12-1990 he worked for a second spell. This fact, as noted above, has been very much admitted by the management in its counter statement and in the affidavit of its witness, MW1. That apart, the first party has produced the aforesaid 3 documents at Ex.W1 to W3 which again establish the fact of first party having worked with the management during the aforesaid two spells of the period. Therefore, the first party having worked with the management continuously for a period of 240 days and more between 04-08-1989 and 10-12-1990 the only conclusion rather the irresistible conclusion to be drawn would be that he worked with the management continuously for a period of more than 240 days i.e. to say for a period of 240 days and more during a period of 12 months in a particular calendar year immediately preceding the date of his termination. Therefore, it is in this view of the matter the case of the first party falls under the ambit of retrenchment as defined under Section

2(oo) of the ID Act read with Section 25F thereof. In no uncertain terms MW1 in his cross examination has admitted that there was no notice issued to the first party nor any enquiry was conducted against him. It is again not the case of the management that there was compliance of provisions of Section 25F of the ID Act while terminating the services of the first party. In the result, there cannot be any hesitation in the mind of this tribunal to come to the conclusion that the action of the management in terminating the services of the first party without the compliance of provisions of Section 25F of the ID Act, when, he undisputedly worked with the management continuously for a period of 240 days and more was illegal and void abinitio not to be sustained in the eye of law and accordingly, it is to be held that the action of the management was in violation of the aforesaid provision of law and so also against the principles of natural justice. Hence is liable to be set aside as illegal and void abinitio.

10. Now, the next question to be considered would be as to what relief the first party workman is entitled for. In the normal course when the termination order is held to be illegal, the natural corollary would be the reinstatement of such a delinquent into the services of the management. However, in the instant case it is not in dispute that the first party was being engaged by the management on temporary and daily wage basis and that there was no regular appointment of him by the management after having followed a procedure and rules for appointment of regular employee. It is again not in dispute that his appointment was not in a sanctioned post and was not made by the competent authority namely, the head of the department. It is under the similar facts and circumstances of the case their Lordship of Supreme Court in a case reported in 2006 SC case (L&S) 967- Municipal Council, Sujampur Vs. Surinder Kumar cited by the management laid down the principle that in a case like one on hand the appropriate relief to be granted will be the monetary compensation and not reinstatement with back wages. Therefore, relief of reinstatement in the present case also cannot be granted in favour of the first party as his services were being utilised by the management as a temporary Driver on daily wage basis.

11. Now, the next question to be considered would be as to what amount of compensation the first party deserves to be granted. As per the case of the first party he was getting monthly salary of Rs. 700 and whereas, it is the case of the management that on the basis of the daily wage the first party was getting monthly salary of Rs. 300. Except the oral testimony of first party that he was getting monthly salary of Rs. 700, we have no other material on record to substantiate his claim. There is no evidence put forth by the management also to prove its case that the first party was getting just a meager charges of Rs. 300 per month. The only suggestion made to the first party in his cross examination on behalf of the management was that he was being paid wages once in 4 days and not on monthly basis. This suggestion was denied by the first party. Therefore, there being laches on this point both on the part of the first party as well as

on the part of the management, let us draw a balance between the two claims considering the salary of the first party as Rs. 500 monthly.

12. Now, the question arises as to whether the first party can be granted back wages at the rate of Rs. 500 from the date of his termination till the date of passing of this award. The contention of the first party as well as his averments in the affidavit that he was not gainfully employed during the period he was away from the service of the management cannot be accepted without a pinch of salt. He being a driver by profession was not supposed to be idling his days without earning any livelihood for himself and his family members. Therefore, keeping in view the aforesaid facts and so also the period of service he rendered with the management being hardly of about 2 years and also keeping in view the period elapsed between the date of termination till today, it appears to me that ends of justice will be met if he is ordered to be granted a compensation in lump sum of Rs. 1 lakh as his full and final settlement of claim against the management. Hence the following award:

#### AWARD

The management is directed to pay a sum of Rupees One Lakh in lump sum to the first party workman in lieu of his full and final settlement of claim against it within a period of six months from the date of publication of this award, failing which the amount shall carry 10 per cent of the interest till its realization. No costs.

(Dictated to PA transcribed by her correct and singed by me on 2nd August 2007)

A. R. SIDDIQUI, Presiding Officer

नई दिल्ली, 8 अगस्त, 2007

का.आ. 2484.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण आसनसोल के पंचाट (संदर्भ संख्या 28/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-07 को प्राप्त हुआ था।

[सं. एल-22012/244/2003-आई. आर. (सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 8th August, 2007

S.O. 2484.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 28/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of Bankola Colliery, M/s Eastern Coalfields Limited, and their workman, received by the Central Government on 8-8-07.

[No. L-22012/244/2003-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

**ANNEXURE****BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL.**

**PRESENT :** Sri Md. Sarfaraz Khan.  
Presiding Officer.

**REFERENCE NO. 28 OF 2004.**

**PARTIES :** The Agent, Bankola Colliery, of E.C.L., Ukhra,  
Burdwan

**Vrs.**

The General Secretary, Koyala Mazdoor Congress,  
Asansol, Burdwan.

**REPRESENTATIVES:**

For the management : None.

For the union (Workman) : Sri Rakesh Kumar, General  
Secretary, Koyala Mazdoor  
Congress, Asansol.

**INDUSTRY : COAL STATE : WEST BENGAL**

Dated the 29-11-2006.

**AWARD**

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No.L-22012/244/2003- IR(CM-II) dated 12-05-2004 has been pleased to refer the following dispute for adjudication by this Tribunal.

**SCHEDULE**

"Whether the action of the management of Bankola Colliery under Bankola Area of M/s. ECL in dismissing Sh. Raju Ruidas, U.G.Loader from services w.e.f. 8-12-97 is legal and justified? If not, to what relief he is entitled to?"

On having received the Order No. L-22012/244/2003-TP(CM-II) dated 12-05-2004 of the aforesaid reference from the Govt. of India, Ministry of Labour, New Delhi, for adjudication a reference case No. 28 of 2004 was registered on 21-06-04 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and file their written statements along with the relevant documents and a list of witnesses in support of their claims. In compliance of the said order notices by the registered post were sent to the parties concerned. Sri Rakesh Kumar, General Secretary of the union, appeared to represent the workman concerned and filed a written statement in support of its case.

2. In brief compass the case of the union as set forth in its written statement is that Sh. Raju Ruidas, U.G.Loader of Bankola Colliery was a permanent employee of the said company under Bankola Area of M/s. Eastern Coalfields Limited. The workman concerned absented from duty w.e.f. 21-8-97 to 1-10-97 due to his illness for which he

was dismissed from his service vide dismissal order dated 6-12-97. The further case of the union is that the delinquent employee had replied the charge and participated in the enquiry proceedings and he had informed the enquiry officer that he was sick and his treatment was continuing at colliery dispensary from 8-8-97 to 28-8-97. He was declared fit to join his duty on 21-8-97 by the doctor but he could not perform his duty because of pain in his chest. So he again remained under treatment w.e.f. 19-9-97 but he again fell ill and gone under treatment. It is also the case of the union that since he was allowed to join his duties on 19-9-97 so his absence should be treated only from 20-9-97 to 30-9-97 i.e. only 10 days which was also due to sickness which was beyond his control. The workman had submitted the treatment papers to the management and to the enquiry officer but that was not considered by them before taking the decision of punishment. The absence period from duty of the workman is said to be only one month nine days of the absence period is taken from 21-8-97 to 30-9-97 and in this period also he was under treatment and he was allowed to join duty on 19-9-97 considering his sickness and if we take the absence period from 19-9-97 to 1-10-97 then his absence period comes only ten days, then how management had taken the decision of his dismissal for the absence of only ten days. It is also the defence case that Raju Ruidas, the workman concerned is a young man. He joined his duty on 20-7-93 as U.G.Loader. Since he is very weak and not habituated in the job of U.G.Loader which is a hard work and a hazardous job so he could not adjust himself and fell ill and due to this he could not attend his duties properly, it does not mean that he is not willing to work. Raju Ruidas is now facing starvation along with his family and he is now ready to work in any capacity in under ground. He belongs to scheduled cast community having no source of income for his livelihood. So his case should be considered.

It is further claimed that the punishment of dismissal is extreme punishment which should not be awarded to Raju Ruidas. Punishment should always be proportionate to the nature of offence but in this instant issue management awarded disproportionate to him, so he should be allowed back to join his duty after setting aside the dismissal order and be reinstated with full back wages.

4. On the other hand nobody has appeared to represent the management. It is clear from the record that registered notice was duly issued from the office to the management which was personally served upon the management as per the Acknowledgement Due goes to show that the registered notice was personally received by the management and an endorsement to that effect was made in A/D after receiving the same. The notice was served upon the management on 28-9-04 but in spite of several adjournments nobody turned up to represent the management and contest the case. Ultimately the case was fixed for ex-parte hearing.

5. The record goes to show that on 3-8-06 a hearing on the preliminary point of validity and fairness of the enquiry proceeding was made. Since the validity and

fairness of the enquiry proceeding was not challenged and no invalidity or unfairness in the enquiry proceeding was found the same was held to be fair and proper and the case was fixed for final hearing on the merit of the case. The final hearing of the case was taken up on 3-8-06 and the award was kept reserved for order.

6. On perusal of the record it transpires that the union has not examined any oral witness in support of its case. The union has filed the Xerox copies of the Identity Card of the workman concerned, Xerox copy of the appointment letter and an application of the workman for allowing him to join his duty stating therein the reasons of his absence from duty, copy of the Medical Certificate dated 30-9-97, copy of the charge sheet dated 1-10-97, copy of the enquiry proceedings along with its report, copy of the dismissal letter dated 6-12-97, copy of the mercy petition for the reinstatement of the workman concerned.

7. It is admitted in view of the pleadings of the union that the workman concerned was absent from his duty with effect from 21-8-97 to 30-9-97 i.e. one month 9 days due to his sickness as he was under the treatment of a doctor. It is also clear from the record and the enquiry proceedings and its report that the delinquent employee had appeared before the enquiry officer and had actively participated in the enquiry proceedings. There also the workman concerned had admitted that he was sick at the colliery dispensary from 8-8-97 to 20-8-97 due to pain in his chest. He was declared fit to join duty w.e.f. 21-8-97 but he could not join because he again suffered from pain on his chest. He was under treatment of Ukhra B.P.H.C. from 22-8-97 to 9-9-97. He was allowed to join duty w.e.f. 19-9-97 by order of P.M., Bankola Area. But he could not join duty on 19-9-97 because he again suffered from fever and was under the treatment of Dr. A. K. Layak, a private doctor of Ukhra from 19-9-97 to 29-9-97. He has clearly admitted that he did not send any information to the management.

8. Having gone through the entire facts, circumstance, enquiry proceedings and the finding of the enquiry officer I find that the delinquent employee was admittedly guilty for the charge of unauthorized absence without any leave, prior permission or information to the management. No document is available on the record to show that the workman concerned was habitual absentee even if there would have been any such case he had already been punished for the same as it is apparent from the enquiry report. In view of the aforesaid prevailing facts and circumstances of the case the workman concerned deserves suitable punishment for the alleged proven misconduct of an unauthorized absence as provided in the Model Standing Order.

9. Now the only point in issue before the court is to see as to how far the punishment awarded to the concerned employee by the management is just, proper and proportionate to the alleged nature of misconduct.

10. Heard the learned representative of the union in detail on the aforesaid points in issue. It was argued by the union that it is a simple case of an unauthorized absence for one month 9 days only and the absence from duty

during the relevant period is duly explained and the reasons of absence supported with the medical certificate is relevant and satisfactory. It was further submitted that the workman concerned has got unblemish record during the service tenure. No any chit of paper has been filed to show that previously he was ever punished or charge sheeted for the same offence. The enquiry officer has also not whispered a word that the absence from duty was without any satisfactory reason. These all prevailing facts and circumstance of the case go to indicate that it is the first offence of the workman concerned which has been sufficiently explained and supported by the medical certificate indicating the compelling circumstance beyond the control of the workman concerned. It was emphatically argued out that a simple case of unauthorized absence for one month nine days can not be said to be a gross misconduct. The attention of the court was drawn towards the provisions of the Model Standing Order where the extreme punishment prescribed is dismissal as per the gravity of the misconduct and it was claimed that the extreme penalty can not be imposed upon the workman in such a minor case of alleged misconduct. The points of argument enhanced by the union appears to be reasonable and convincing.

11. It has been several times clearly observed by the different Hon'ble courts and the Apex Court as well that before imposing a punishment of dismissal it is necessary for the disciplinary authority to consider socio-economic back ground of the workman, his family back ground, length of service put in by the employee, his past records and other surrounding circumstances including the nature of misconduct and lastly the compelling circumstance to commit the misconduct. These are the relevant factors which must have to be kept in mind by the authority at the time of imposing the punishment which of course has not been done in this case.

12. Admittedly the delinquent employee is an illiterate man of weaker section of the society who belongs to scheduled cast and financially weak and poor who has suffered a lot for minor misconduct of unauthorized absence under the compelling circumstance beyond his control. I fail to think as to why only maximum punishment under the clause 27(1) (page 15) of the Model Standing Order should be awarded in the present facts and circumstance of the case. It is further clear from the record that no second show cause notice was ever issued to the workman before imposing the punishment of dismissal of the concerned workman which is the direct violation of the mandate of the Apex Court. In this regard a circular was also issued by the management for implementation of the directives of the Apex Court but the disciplinary authority deliberately violated the directive as well and denied the principles of natural justice.

13. However I am of the view that the punishment of dismissal for the alleged misconduct under the compelling circumstance for a short period and without any mala fide intention is not just and proper rather it is too harsh a punishment which is totally disproportionate to the alleged proven nature of misconduct. Such a simple case should have been leniently dealt with by the management. In this

view of the matter I think it just and proper to modify and substitute the same by exercising the power under clause 11 (A) of the I.D. Act, 1947 in order to meet the ends of justice and as such the impugned order of dismissal of the employee is hereby set aside and he is directed to be reinstated with the continuity of the service. In the light of facts, circumstance and the proven misconduct for which the punishment of dismissal was awarded to the workman concerned I think it appropriate that the workman be imposed a punishment of stoppage of two increments without any cumulative effect. It is further directed that the workman concerned will be entitled to get only 40% of the back wages which will serve the ends of justice. Accordingly it is hereby

### ORDERED

that let an "Award" be and the same is passed ex-parte in favour workman concerned. Send the copies of the award to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly dispensed of.

Md. SARFARAZ KHAN, Presiding Officer

नई दिल्ली, 8 अगस्त, 2007

का.आ. 2485.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई. सी. एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण असनसोल के पंचाट (संदर्भ संख्या 49/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-07 को प्राप्त हुआ था।

[सं. एल-22012/206/1998-आई. आर. (सीएम-II)]  
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 8th August, 2007

S.O. 2485.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 49/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of ECL and their workman, which was received by the Central Government on 8-8-07.

[No. L-22012/206/1998-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

### ANNEXURE

### BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL.

PRESENT : Sri Md. Sarfaraz Khan,  
Presiding Officer.

REFERENCE NO. 49 OF 1999.

PARTIES : Agent, Kumardih 'A' Colliery of ECL, Ukhra,  
Burdwan

Vrs.

Sh. Gohan Yadav, Kumardih 'A' Colliery,  
Ukhra, Burdwan.

### REPRESENTATIVES:

For the management : Sri P. K. Das, Advocate.

For the union (Workman) : None.

INDUSTRY : COAL. STATE : WEST BENGAL.

Dated the 19-04-2007

### AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/206/98- IR(CM-II) dated 22-04-99 has been placed dated to refer the following dispute for adjudication by this Tribunal.

### SCHEDULE

"Whether the action of the Management by not rectifying the date of birth as per provision of NCWA-IV and forcefully superannuating the workman is legal and justified? If not, to what relief is the workman entitled?"

After having received the Order No. L-22012/206/98-IR(CM II) dated 22-04-1999 of the aforesaid reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference Case No. 49 of 1999 was registered on 07-06-99 and accordingly an order to that effect was passed to issue notices to the respective parties through the registered post directing them to appear in the court on the scheduled date and file their written statement along with the relevant documents and a list of witnesses in support of their claims. Pursuant to the said order notices by the registered post were sent to the parties concerned.

From perusal of the record it transpires that Sri P. K. Das, Advocate appeared in the court with a letter of authority by the competent authority to represent the management and filed a time petition for adjournment in order to file the written statement on its behalf. The record further goes to show that nobody turned up to represent the union or the workman. Right from 5-10-01 to 27-02-07 six times registered letters with A/D were sent to the workman concerned but all the time it was returned with the postal endorsement that "He is not available on that address". A letter in this regard was also sent to the management to get the registered notice served upon the workman at his official address. The court was informed by the management's letter dated 4-7-02 that Shri Gohan Yadav, the workman is not residing at colliery premises, ultimately the summon was displayed on the colliery notice board. Again a letter dated 30-8-04 was received from the management providing home address of the workman concerned and accordingly registered notice dated 17-9-04 was again sent to Sri Gohan Yadav at his home address but nobody turned up to represent the union or the workman concerned. As such in the prevailing facts and circumstance of the case it is not advisable to keep the record in abeyance. Accordingly it is hereby

**ORDERED**

that let a "No Dispute Award" be and the same is passed. Send the copies of the award to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of

Md. SARFARAZ KHAN, Presiding Officer  
नई दिल्ली, 8 अगस्त, 2007

**का.आ. 2486.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 60/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-07 को प्राप्त हुआ था।

[सं. एल-22012/225/2004-आई. आर. (सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 8th August, 2007

**S.O. 2486.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 60/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Ratibati Colliery of M/s. ECL, and their workmen, which was received by the Central Government on 8-8-07.

[No. L-22012/225/2004-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL.**

**PRESENT**

Sri Md. Sarfaraz Khan, Presiding Officer.

**REFERENCE NO. 60 OF 2005**

**PARTIES :** The Agent, Ratibati Colliery, ECL,

Vrs.

Sri S.K. Pandey, the General Secretary, Koyla Mazdoor Congress, Asansol, Burdwan.

**REPRESENTATIVES:**

For the management : None.

For the union (Workman) : Sri S.K. Pandey, General Secretary.

**INDUSTRY :** COAL. **STATE :** WEST BENGAL.

Dated the 22-11-2006.

**AWARD**

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India, through the Ministry of Labour vide its letter No.L-22012/225/2004- IR(CM-II) dated 29-06-2005 has been pleased to refer the following dispute for adjudication by Tribunal.

**SCHEDULE**

"Whether the action of the management of Chapuikhas Colliery of E.C.L in dismissing Shri Abhimanyu Nayak is legal and justified? If not, to what relief the workman is entitled?"

After having received the Order No. L-22012/225/2004- IR(CM-II) dated 29-6-2005 of the aforesaid reference from the Govt. of India, Ministry of Labour, New Delhi, for adjudication a reference case No. 60 of 2005 was registered on 17-08-2005 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and file their written statements along with the relevant documents and a list of witnesses in support of their claims. In compliance of the said order notices by the registered post were issued to the parties concerned. Sri S.K. Pandey, General Secretary of the Union appeared in the Court to represent the workman concerned and file his written statements in support of his case.

In brief compose the case of the union as set forth in its written statement is that Sri Abhimanyu Nayak, Man No. 396710 a surface trammer was the permanent employee of Chapuikhas Colliery of M/s Eastern Coalfield Limited.

The main case of the union is that the delinquent workman absentee himself from his duty w.e.f. 6-10-99 to 7-11-2001 for which he was charge sheeted vide charge sheet No. CKC/PERS/P-5/C.S/MGR/01/386 dated 7-11-2001. The workman concerned was absent from his duty on the aforesaid relevant period due his sickness which was beyond his control. After being declared medically fit he reported to the management for resumption of his duty but he was not allowed. The further case of the union is that the workman concerned appeared before the enquiry officer and replied to the charge sheet. He also submitted his sickness certificates for the perusal of the enquiry officer, but unfortunately workman concerned was dismissed from his service of the company on dated 29-09-2003 by the Agent, Ratibati Colliery who is not at all empowered to dismiss any workman as per coalfields standing orders of the company. It is also said to be surprising that the Enquiry officer though submitted his report on 2-9-2002 but the workman concerned was not allowed to resume his duty and ultimately dismissed on 29-9-2003 from the service after a lapse of more than one year. The delinquent employee is sitting idle without any job for more than three years and his entire family is on the verge of starvation. The union has further claimed that the dismissal of the workman concerned from his service from the company is absolutely illegal and unjustified. The union has sought a relief for setting aside the order of dismissal of the workman concerned and reinstatement in the service with full back wages with the consequential benefit.

On the other hand in spite of the receipt of the registered notice by management nobody turned up to represent the management. The acknowledge due has been received back. It is clear from the same that the registered notice was personally received by the Agent, Ratibati Colliery, E.C.L on 5-4-2005 and an endorsement to that effect by way of signature of the Agent with date has been made which go to show that it was the personal services of the notice which is legal and proper service of the notice. It is also clear from the record that since the date of receipt of the notice several times were granted for the appearance of the management but to no effect and none appeared to represent the management. Ultimately the case proceeded for ex-party hearing of the case.

From perusal of the record it transpire that the Union has filed the Xerox copies of the charge sheet, enquiry report along with its enquiry proceeding, copy of the dismissal order and the Medical certificate in support of its case. No oral witness has been examined by the Union.

On perusal of the record Enquiry Proceeding and its report it transpires that the workman concerned had received the charge sheet and had participated in the enquiry proceeding. He has categorically admitted in this statement before the enquiry officer that he could not send any information to the management about his illness and during the said relevant period he was absent from his duty as he was under going the treatment by a private doctor for his mental disease and to that effect a medical fitness certificate was produced before the enquiry officer. The union has also not whispered a word in its pleading about sending any information about his sickness to the management.

Having through its entire facts, circumstances, evidence, the enquiry proceedings and the findings of the Enquiry Officer I find that the workman concerned was admittedly absent from his duty w.e.f. 6-10-1999 to 7-11-2001 continuously without any leave, prior permission and information to the management. The enquiry officer has rightly held him guilty for the misconduct of unauthorized absence under section 26.29 of the Certified Standing Order of the colliery and in view of the aforesaid prevailing facts the delinquent employee deserves some suitable punishment for the alleged proven misconduct as provided in the Model Standing Order.

Now the only point in issue for the consideration before the Court is to see as to had for the punishment awarded to the concerned workman by the management is just proper and proportionate to the alleged nature of the proven misconduct of unauthorized absence.

Heard the representative of the union in detail on the aforesaid point in issue it was submitted by the union that it is a simple case of an unauthorized absence and the absence from duty during the relevant period is duly explained and the reason of absence supported with the medical certificate is relevant and satisfactory. It was further submitted that the delinquent employee has got unblemish record during the service tenure and there is no charge of habitual absence against him and that is why no any chit of paper had been filed before the enquiry officer to show that previously he was punished and charge sheeted for the same offence. The enquiry officer has also not whispered a word in the report of his findings. These all prevailing facts and circumstance go to show that it is the first offence of the workman concerned which has been sufficiently explained and supported by the medical certificate indicating the compelling circumstance beyond the control of the workman concerned. He has also submitted that the enquiry officer has also not denied the fact that the absence from duty was without any sufficient reasons. It was strongly submitted that a simple case of an unauthorized absence duly explained can not be said to be a gross misconduct. The attention of the Court was drawn towards the provision of the Model Standing Order where the extreme punishment prescribed is dismissal as per the gravity of the misconduct and it is claimed that the extreme penalty can't be imposed upon the

workman in such a minor case of alleged misconduct of the unauthorized absence. The point of argument enhanced by the union appears to be reasonable and convincing. The unauthorized absence from the duty under prevailing competing circumstance beyond the control of the workman can not be taken to be serious lapse which commands dismissing from service. It is well settled that the punishment of dismissal is not proper in case of absence from duty. It has been held in state of Punjab Vs. Ahab Singh reported in 1991 (U) SLR 539 that "Here absence from duty for a few days does not amount to an act of gravest misconduct and the cumulative effort of which may go to prove in corrigency and complete unfitness of the employees for police service and dismissal from service was held illegal. The Apex Court has also held as under "Even otherwise, I am of the considered view that if a person committed negligence of being absent from duty that should not go the root of his service because in that case it will be too harsh not only for him, but for the children who are dependent in him.

It has several times clearly observed by the different Hon'ble High Court and the Apex Court as well that before imposing a punishment of dismissal it is necessary for the disciplinary authority to consider Socio-economic background of the workman, his family background, Length of service put in by the employees, his past records and other surrounding circumstance including the nature of misconduct and lastly compelling circumstance to commit the misconduct. These are the relevant factors which must have to be kept in mind by the authority at the time of imposing the punishment which of course has not been done by the competent authority in this case.

However, I am of the view that the punishment of dismissal for an unauthorized absence under the compelling circumstance without any mala fide intention is not just and proper rather it is too harsh a punishment which is totally disproportionate to the alleged proven misconduct. Such a simple case of misconduct should have been dealt with leniently by the management. In this view of the matter I think it just and proper to modify and substitute the same by exercising the power under section II (A) the I. D. Act, 1947 in order to meet the ends of justice and as such this impugned order of dismissal of the concerned workman is hereby set aside and he is directed to be reinstated with the continuity of his service. In the light of the facts circumstance and the nature of the proven misconduct for which the punishment of dismissal was awarded to the workman concerned. I think it appropriate that the delinquent employee be imposed a punishment of stoppage of two increment without any cumulative effect. It is further directed that the workman concerned will be entitled to get 50% of the back wages which will serve the ends of justice. Accordingly it is hereby.

#### ORDERED

that let an "Ex-parte Award" be and the same is passed in favour of the workman concerned. Send the copies of the award to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

MD. SARFARAZ KHAN, Presiding Officer

नई दिल्ली, 8 अगस्त, 2007

**का.आ. 2487.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार माईनस रिस्कुरे स्टेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण आसनसोल के पंचाट (संदर्भ संख्या 123/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-2007 को प्राप्त हुआ था।

[सं. एल-22012/460/2004-आईआर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 8th August, 2007

**S.O. 2487.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 123/2005) of the Central Government Industrial Tribunal-Cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of Mines Rescue Station, and their workmen, received by the Central Government on 8-8-2007.

[No. L-22012/460/2004-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

#### PRESENT:

**SRI MD. Sarfaraz Khan, Presiding Officer**

**REFERENCE NO. 123 OF 2005**

#### PARTIES:

The General Manager, Mines Rescue Station,  
Sitarampur, Burdwan,

Vrs.

The General Secretary, Colliery Mazdoor Sabha  
(IMWF & AITUC), G.T. Road,  
Asansol, Burdwan.

#### REPRESENTATIVES:

For the management: Sri P. K. Goswami, Advocate

For the union (Workman): Sri N. Ganguly, Advocate

**INDUSTRY: COAL STATE: WEST BENGAL.**

Dated the 15-05-2007

#### AWARD

In exercise of powers conferred by clause (d) of Sub-section (I) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Government of India through the Ministry of Labour vide its letter No. L-22012/460/2004-IR(CM. II) dated 21-09-2005 has been pleased to refer the following dispute for adjudication by this Tribunal.

#### SCHEDULE

“Whether the action of the management of Mines Rescue Station, Sitarampur, M/s. Eastern Coalfields Ltd. in denying inclusion of Rescue Station Allowance/U.G.

Allowance as part of basic pay in respect of persons posted at Rescue Station is legal and justified? If not, to what relief the workmen are entitled?

On having received the Order No. L-22012/460/2004-IR(CM.II) dated 21-09-2005 in respect of the reference concerned from the Govt. of India, Ministry of Labour, New Delhi, for adjudication of the dispute referred a reference case No. 123 of 2005 was registered on 7-10-2005 and accordingly an order was passed to issue notices to the respective parties through the registered post directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their case. Pursuant to the said order notices by the registered post were issued to the parties concerned. Sri P.K. Goswami, Advocate and Sri N. Ganguly, Advocate appeared in the Court to represent the Management and the Union respectively.

From the perusal of the record it transpires that both the parties have filed their written statements in support of their respective claims. The record further goes to show that from 23-01-06 nobody turned up to represent the union. Several adjournments and direction were given to the union to appear in the Court and to pursue the record but to no effect. The regular absence of the union w.e.f. 23-01-06 to 15-05-07 clearly indicate that the union or the workmen does not want to proceed further with the record and they have lost the interest. In the prevailing facts and circumstance of the case it is not advisable to keep the record pending any more an anticipation of the appearance of the union in order to take suitable steps. And such it is hereby.

#### ORDERED

that let a “No Dispute Award” be and the same is passed. Send the copies of the order to the Government of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed off.

MD. SARFARAZ KHAN, Presiding Officer

नई दिल्ली, 8 अगस्त, 2007

**का.आ. 2488.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आल इण्डिया रेडियो के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 131/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-2007 को प्राप्त हुआ था।

[सं. एल-42012/259/2003-आईआर(सीएम-II)]

अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 8th August, 2007

**S.O. 2488.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 131/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, No. 2, New Delhi as shown in the Annexure in the Industrial Dispute between the management of All

India Radio, 132, Malik Pur, Tagore Park, Delhi and their workman, received by the Central Government on 8-8-2007.

[No. L-42012/259/2003-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

#### ANNEXURE

#### BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, NEW DELHI

Presiding Officer : R. N. RAI

I.D. No. 131/2004

#### PRESENT :

Sh. S. D. Sharma — 1st Party  
Sh. Atul Bhardwaj — 2nd Party

#### IN THE MATTER OF

Shri L. B. Narula,  
81, Shyam Block, Kailash Nagar,  
Delhi-110031

#### Versus

1. The Chief Engineer, Civil Construction Wing,  
All India Radio, Form—II, PTI Building,  
Parliament Street,  
New Delhi-110001
2. M/s. Om Prakash,  
132, Malik Pur, Tagore Park,  
Delhi-110009

#### AWARD

The Ministry of Labour by its letter No. L-42012/259/2003-IR (CM-II) Central Government Dt. 3-08-2004 has referred the following point for adjudication.

The point runs as hereunder :—

“Whether the contract awarded by the management of Chief Engineer, Civil Construction Wing, All India Radio, New Delhi to M/s. Om Prakash, Malikpur, Tagore Park, New Delhi, is sham? If so, whether the demand of Shri L. B. Narula for reinstatement in the establishment of Chief Engineer, Civil Construction Wing, All India Radio, New Delhi is justified? If so, to what relief the workman is entitled to?”

The workman applicant has filed claim statement. In the claim statement it is stated that the workman named was engaged as a Project Operator on a monthly salary of Rs. 3000 per month during International Film Festival on 20-12-1992 by the Director, Film Festival and worked upto 23-10-1999 when the services of the workman were terminated illegally and against the principles of natural justice. The workman always worked sincerely, diligently and with devotion and dedication and never gave any chance of complaint regarding his duties. The workman was known for his dedication in work.

That though the workman was engaged directly, yet he was shown through Contractor namely Sh. Om Prakash who himself was engaged in April, 1993 but shown as Contractor. The workman always performed regular nature of work as performed by similar category of employees i.e. by Shri Dhan Singh, Project Operator. Shri Dhan Singh was getting a salary of Rs. 8,500 per month and Shri Hanif Khan was getting Rs. 6,500 per month, whereas the workman was paid much less wages.

That in the minutes of the meeting held in the office of CE (C), CCW, AIR, New Delhi on 18-05-1993 it was decided to continue the operational staff engaged by DFF to operate projection system in Auditorium—II for the International Film Festival, 1993 until permanent arrangements are made and also decided that staff will be paid by Civil Construction Wing of All India Radio on the same terms and conditions as offered by DFF during IFFI, 1993. That the above decision was conveyed to the Superintending Engineer (E), CCW, AIR for creation of post for projection system of Mini Auditorium, Sirifort, New Delhi vide letter dated 08-09-1993.

That the services of the workman was dispensed on 23-10-1999 during the pendency of OA No. 1996/1999 before the CAT which is illegal, unjustified, anti-labour and against the principles of natural justice. Though the workman fulfilled all the requisite qualifications to be regularized in the employment yet the management dispensed with his services without giving reasons. That no notice or show cause notice or notice pay in lieu of notice was either given or offered to the workman. The management has violated the provisions of Section 25 F of the ID Act, 1947. The action of the department is illegal and unjustified and is liable to be set aside as such the workman is entitled to be reinstated in services with full back wages and in continuity of service. The workman had completed more than 240 days. The cloak of contractor Shri Om Prakash was a farce. The alleged contractor Shri Om Prakash was himself an employee. He had no registration under the Contract Labour (Regulations & Abolition) Act, 1970. The department was also having no registration under the CL(RA) Act, 1970. The alleged contract system is sham and is liable to be declared as such.

The work which was performed by the workman was of perennial in nature and which has considerably increased and the work still subsists.

That the workman is unemployed since his illegal termination. He could not get alternative gainful employment despite his best efforts and is ready to serve the department.

The management has filed written statement. In the written statement it is stated that the present reference is bad in law, without application of mind and in a stereo type manner hence liable to be dismissed.

That there is no relationship of employer and employee and that of a master and servant existing or otherwise exists between the claimant and the management.

That the present claim petition has no cause of action against the answering management as claimant had never been engaged as an employee of the answering management.

That by virtue of the position of the claimant and the status of the claimant and being an employee of the contractor agency he did not answer the description of the word “WORKMAN” as defined in the clause (s) of Section 2 of the ID Act, 1947. In view of this the claim of the claimant is utterly misconceived and the same deserves to be dismissed out rightly.

That the above said claimant was engaged by M/s. Om Prakash a contractor and the claimant has/had never been engaged, as an employee of the answering management.

That the above claimant has no locus standi to file this claim against the answering management being there is no industrial dispute between the claimant and the answering management.

That the claim petition is not maintainable as the claimant has not come with clean hands and concocted the material facts before the Hon'ble Tribunal, the claim appears to be less substantiated with facts. Hence the claim deserves dismissal being a misplaced ere-supposition.

That the claimant is sailing in two boats at the same time and wants to get himself declared as an employee of management No. 1 by filing the present claim petition. The claimant cannot file the alternate claim against the management No. 1 and 2 hence liable to be dismissed.

That the present claim petition is barred by res-judicata, since the same relief as claimed in the present claim petition has already been considered and disposed of by the CAT hence present claim petition is liable to be dismissed.

That it is absolutely wrong and vehemently denied that claimant was engaged as Project Operator on a monthly salary of Rs. 3000 during International Film Festival on 20-12-1992 by the Director, Film Festival as alleged. However, it is submitted that the answering management never engaged the claimant. The contractor namely Shri Om Prakash has engaged him. This fact has already been established in the case filed by the claimant before Hon'ble CAT. The claimant was never employed by the office of the answering management.

That, it is absolutely wrong and vehemently denied that the workman was engaged directly, yet he was shown through contractor as alleged. It is pertinent to mention here that the workman was never engaged by the answering management. That the Projector Operation requirements for the Siri Fort Auditorium of the answering management had been awarded to the contractor, on various dates and various years. The requirement and deployment of projection staff in the said auditorium which is covered within the scope of the agreement between the respondents and the contractor was and is the sole discretion of the contractor, who directly recruits such personnel for duty at various locations. Therefore, theoretically and practically the concerned management was never the employer of, and had nothing to do with the employment of the workman. It is further submitted that the payment to contractor staff is made directly by the contractor only. The contractual staff including the workman never complained to department regarding lesser payment.

That it is submitted that the mere holding a meeting by some officers does not establish that the work is of perennial nature and that regular posts have to be created for that work. The officers are free to discuss various matters and record them in the minutes, but is up to the appropriate authority in government to decide whether a permanent post has to be created for a particular work or not depending on the requirement of work. It is submitted that the requirement of projection staff depends upon the booking of film shows in the Auditorium.

It is submitted that in para under reply workman misrepresented that the answering management have 5

projection rooms, whereas there are only 3 projection rooms in total out of which mostly 2 projection rooms are used and for which there is already one projector operator and additional work is done through contractor as per requirement. Moreover about the order of the Hon'ble CAT it is submitted that no regular post has been created by the department till date whenever regular post are created, he will also be considered subject to their fulfilling the requisite minimum qualification etc. as per Hon'ble CAT direction.

It is submitted that the claimant was never engaged by the answering management. The workman was engaged by the contractor. The answering management has no control over the engagement of contractor labour. The contractor engage the worker as per their requirements. This has been already established in the cases filed by them before the Ld. CAT. Hence the allegations made by the claimant in these respects are denied as being totally baseless.

It is pertinent to mention here that the answering management is executing the work on the pattern of CPWD where no registration is required for workers employed by the contractor. As per the CPWD manual a contractor for specialized works is required to have a contractor licence. The contract to Shri Om Prakash was also given as per the applicable rules and regulations of the government. It is denied that Shri Om Prakash is an employee of the answering management as alleged.

It is specifically denied that work, which was performed by the workman, was of perennial in nature and which has considerably increased and the work still subsists. It is submitted that the requirement of projection staff depends upon the booking of film shows and is not continuous. Additional work required is done through contractor as per CPWD practice.

The workman applicant has filed rejoinder. In his rejoinder he has reiterated the averments of his claim statement and has denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard argument from both the sides and perused the papers on the record.

Written argument has been filed by both the parties.

From the pleadings of the parties the following issues arise for determination :—

1. Whether there is relationship of employer employee between the management and the workman?
2. Whether the workman is entitled to reinstatement/regularization?
3. Whether the breach of Section 7 and 12 of the Contract Labour (Regulation & Abolition) Act, 1970 is punitive?
4. To what amount of back wages the workman is entitled?
5. Relief if any?

#### Issue No. 1

It was submitted from the side of the workman that the workman was engaged as a Project Operator on a

monthly salary of Rs. 3000 per month during International Film Festival on 20-12-1992 by the Director, Film Festival and worked upto 23-10-1999 when the services of the workman were terminated illegally and against the principles of natural justice.

It was further submitted that though the workman was engaged directly, yet he was shown through Contractor namely Sh. Om Prakash who himself was engaged in April, 1993 but shown as Contractor.

The workman had completed more than 240 days. The cloak of contractor Shri Om Prakash is a farce. The alleged contractor Shri Om Prakash was himself an employee. He had no registration under the Contract Labour (Regulation & Abolition) Act, 1970. The department was also having no registration under the CL(RA) Act, 1970.

The work which was performed by the workman was of perennial in nature and which has considerably increased and the work still subsists.

It was submitted from the side of the management that there is no relationship of employer and employee and that of a master and servant existing or otherwise exists between the claimant and the management.

That the above said claimant was engaged by M/s. Om Prakash a contractor and the claimant has/had never been engaged as an employee of the answering management.

That the above claimant has no locus standi to file this claim against the answering management being there is no industrial dispute between the claimant and the answering management.

It was further submitted that the claimant is sailing in two boats at the same time and wants to get himself declared as an employee of management No. 1 by filing the present claim petition. The claimant cannot file the alternate claim against the management No. 1 and 2 hence liable to be dismissed.

The workman has stated in Para—I of the claim statement that he was engaged as Project Operator on a monthly salary of Rs. 3000 pm during the National Film Festival on 20-12-1992 by the Director, Film Festival and he worked upto 23-10-1999.

In reply to Para—I the working period has not been repudiated. It has been stated that the contractor namely Shri Om Prakash has engaged him. So it is admitted to the management that the workman worked regularly and continuously from 20-12-1992 to 23-10-1999 sincerely and honestly. The fact that the workman was engaged by the Director has been disputed in Para—I. So it stands proved that the workman worked continuously from 20-12-1992 to 23-10-1999 from the admission of the management.

The management has taken the plea that the workman was engaged by Shri Om Prakash, the Contractor. The management has specifically taken this plea and the burden is on the management to prove that the workman was engaged by Shri Om Prakash, the Contractor. No contract agreement has been filed on the record.

The workman has filed duty pass valid up to 05-07-1993. It has not been mentioned in this card that the

workman was engaged through contractor. The workman has further filed duty pass dated 08-01-1997. In this duty card also the designation of the workman is as Assistant. The workman has filed duty pass which is valid up to 13-12-1997. From the duty passes annexed with the record it becomes quite vivid that the workman has attended duty from 1994 to December, 1997.

B—23 is photocopy of letter of appreciation. On 20th November, 1997 the competent authority has issued the appreciation letter for excellent service and co-operation given by the workman during the Film Festival.

It has nowhere been mentioned in these papers that the workman was engaged through the contractor Shri Om Prakash. No contract agreement has been filed on the record.

It transpires from perusal of the decisions taken by the Government of India, Directorate of Film Festival that recommendations have been made to create posts of Assistant Project Operator. Though the posts have not been sanctioned by the Government. Sanction of posts is immaterial, in case a workman has been engaged for more than 240 days, he is entitled to one months pay in lieu of notice and retrenchment compensation, even his engagement is not against any vacant post. It is no doubt the prerogative of the Government to create posts, according to the postulates of Section 25 F, in case a workman has performed continuous and regular work for more than 240 days he is entitled to 15 days retrenchment compensation whether there exists post or not.

Applicability of Section 25 F is not subject to the existence or otherwise of regular posts. There was work of Project Operator and the workman discharged his duties at this post from 1992 to 1999 for 7 years. So the management was duty bound to make payment of retrenchment compensation and one months pay in lieu of notice. The management has not complied with Section 25 F of the ID Act, 1947.

The management has filed documents regarding engagement of contract labour but these documents pertain to 2006. No other documents have been filed on the record to establish the fact that the workman was engaged through contract agreement. The management should have filed the documents relating to the contract agreement, the agreement of 2006 has no nexus to the continuous working of this workman.

MW1 has stated as under :—

"I cannot tell whether Shri Om Prakash furnished the names of the workmen. He brought with as a contract labour."

"I have not brought the records pertaining to the payment of contract amount to Shri Om Prakash."

It has been held in 1999 ILLJ page 1086 as under :—

"The so called contractor was a mere name lender and had procured labour for the Board from the open market. He was almost a broker or an agent of the Board for that purpose. Once the Board was a principal employer and the so called contractor was not a licensed contractor under the Act, the inevitable conclusion was that the so called contract system was a camouflage, smoke and a

screen and disguised in almost a transparent veil which could easily be pierced and the relationship between the Board and the respondent employees could be clearly visualized."

In the instant case also there is only assertion that the workman was engaged through contractor. There is no evidence to substantiate the plea of the management. In such circumstances the contract system is camouflage, smoke and screen and disguise in almost a transparent veil which can be easily pierced. This case is squarely covered by the judgment of the Hon'ble Apex Court.

It has been held in 1960 3 SCR page 466 as under :—

"That doing this work through annual contracts resulted in the deprivation of security of service and other benefits, privileges, leave etc. of the workmen of the contractor and that therefore the contract system with respect to this work should be abolished."

It has been held in 1978 11 LLJ 397 as under :—

"The true test may be indicated once again. Where a worker or group, of workers, labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker is virtually laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship *ex contractu* is of no consequence."

In the instant case it cannot be said that the workman worked for Sh. Om Prakash which the management has economic control and over the workers' subsistence, skill and continued employment. The presence of intermediate contractors in such case is of no consequence.

It was further submitted that the management has annexed with the record the contract agreement of 2006. Records themselves are a sound proof that the work is of continuous nature. The management is taking the work from contract labours which is in of Section 10 of Contract Labour (Regulation & Abolition) Act, 1970. The contract workers cannot be engaged for perennial nature of work or work of sufficient duration. The management in the instant case can hire the services of any person for the period of requirement and remove him after payment of retrenchment compensation.

It has been held in Steel Authority of India that if a contract is found not genuine but mere camouflage, the so called contract labour will be treated as employees of the principal employer who shall be directed to regularize the services of the contractor labours in the concerned establishment. In this Constitution Bench Judgment also it has been held that the industrial adjudicator will decide whether the contract is genuine or sham and the contractor is only a name lender. If the Tribunal finds that the contract is sham the contract workers will become the employee of the principal employer and direction for regularization may be issued.

In (1993) 3 SCC 601, the Hon'ble Apex Court has held as under :—

"In order to keep such plants and stations clean, the board awarding contracts to contractors—Under such a

contract, one of the contractors was required to engage a certain minimum number of Safai Karamcharis for cleaning the Main Plant Building at Panipat for a period of one year—Services of Safai Karamcharis so engaged, terminated after they had worked for more than 240 days in the said establishment under the supervision and administration of the Board - Relief - On facts the contractor found only to be a name lender and that there was no genuine contract with him - In such circumstances, High Court rightly lifted the veil and held the said Safai Karamcharis to be employees of the Board and therefore, entitled to reinstatement without resort to S.10 of the Contract Labour (Regulation & Abolition) Act, 1970."

In this case also the contract labours were engaged under bogus contract and Hon'ble Apex Court held that the workmen were entitled to reinstatement as there is no genuine contract. In the instant case also there is no genuine contract.

It has been held in 2003 Lab IIC 2630 as under :—

"Fact that work of gardener is not integral part of industry of company - Does not make them any the less employees of company when they were employed with company to work in its premises."

From perusal of this case law it becomes quite vivid that in case a workman is working in the premises of the management he shall be deemed to be an employee of the management.

It has been held in (2004) 1 SC 127 as under :—

"Integration" test is one of the relevant tests. It is applied by examining whether the person was fully integrated into the employer's concern or remained apart from and independent of it. The other factors which may be relevant are - who has the power to select and dismiss, to pay remuneration, deduct insurance contributions, organize the work, supply tools and materials and what are the mutual obligations between them."

It has been further held in Secretary, Haryana State Electricity Board and Suresh & Others as under :—

"When contract workers carry out work of perennial nature, contract labour system gets abolished—If contract labour is for seasonal work, question of abolition would not arise —If so called contractor was mere name lender, who procured labour for appellant Board, as broker, Board was principal employer—So called contract was mere camouflage which concealed real relationship of employer—employee."

From perusal of the judgment cited above it becomes quite vivid that contract labours cannot be engaged for a work of perennial nature and of sufficient duration. Section 10 of Contract Labour (Regulation & Abolition) Act, 1970 prohibits such employment.

In the instant case the workman worked in the premises of the management under the control and supervision of the management. The fake contractor, Sh. Om Prakash cannot control and guide the work in Sirifort Auditorium. He is not registered even as a contractor. There is no document to prove the fact that there was any agreement between Shri Om Prakash and the management.

The workman was directly engaged by the management. He worked continuously for 7 years in the premises of the management, so there is employer-employee relationship between the management and the workman.

It has been held in the case of *Donovan Vs. Laing, Wharton and Down Construction Syndicate* as under :—

“It is not always correct to say that persons appointed and liable to be dismissed by an independent contractor can in no circumstances be the employees of the third party.”

Even if it is supposed that Sh. Om Prakash was contractor of the management and he brought the workman for the work of the management in that case also the management is the master. This issue is decided accordingly.

#### Issue No. 2

In *Umadevi's* case it has been held that in case a workman has worked continuously for 10 years and above and without the orders of the court the Government may consider the feasibility of regularization of such an employee. In the instant case the workman has not worked for 10 years, so the workman is not entitled to be regularized in view of this Constitution Bench Judgment. It has been held while deciding issue No. 1 that there is employer-employee relationship between the management and the workman and the contractor is fake in such case Section 25 F is attracted. The termination of service in such case without payment of retrenchment compensation is absolutely illegal.

My attention was drawn by the Ld. Counsel of the workman to 2000 LLR 523 State of U.P. and *Rajender Singh*. The Hon'ble Apex Court ordered for reinstatement with full back wages as the services of the daily wage cleaner who worked for 4 years was dispensed with without following the procedure for retrenchment. In the instant case also no retrenchment compensation has been paid. This case law squarely covers the instant case.

It has been held in 1978 Lab IC 1668 that in case service of a workman is terminated illegally the normal rule is to reinstate him with full back wages.

My attention was further drawn to AIR 2002 SC 1313. The Hon'ble Supreme Court has held that daily wage even if serving for a short period should be reinstated.

It was submitted from the side of the workman that in the instant case Sections 25 F, G of the ID Act are attracted. In Section 25 of the ID Act it has been provided that if a workman has performed 240 days work and if the work is of continuous and regular nature he should be given pay in lieu of notice and retrenchment compensation.

It has been held by the Hon'ble Apex Court that there is no cessation of service in case provisions of Section 25 F are not complied. In the instant case no compensation has been paid to the workman.

In case a workman has worked for 240 days in a year and the work is of continuous and regular nature he should be paid retrenchment compensation. In case retrenchment

compensation is not paid Section 25 F of the ID Act, is attracted. There is no cessation of his services. He is deemed continued in service in the eye of law. In case there is breach of Section 25 F the service is continued and reinstatement follows as a natural consequence.

It may be submitted that the workman was engaged during the Film Festival, which was a Project for a short period. Even in that case Section 25 FFF is attracted.

It has been held in Section 25 FFF that in case a workman has worked continuously for more than a year and in case prejudice is caused in that case also the workman is entitled to notice and compensation in accordance with the provisions of Section 25 FFF as if the workman had been retrenched. Even if it is assumed that the work was not of a permanent nature and the functions performed by the workman are no longer existing, the workman is entitled to retrenchment compensation and one months pay u/s 25 FFF of the ID Act, 1947.

The workman has worked continuously for 7 years under the control and supervision of the management. No compensation has been paid to him. So he is entitled to retrenchment compensation and one months pay u/s 25 FFF.

In the facts and circumstances of the case the workman is entitled to reinstatement. This issue is decided accordingly.

#### Issue No. 3

It was submitted from the side of the workman that the respondents are State under Article 12 of the Constitution of India. They are not complying with the relevant provisions of Section 7 & 12 of Contract Labour (Regulation & Abolition) Act, 1970.

Section 23 of the said Act, 1970 is punitive for the breach of Section 7 & 12.

It was further submitted that neither the contractor nor the management has got themselves registered under Section 7 of the Act, 1970 and they have filed no document on the record.

From perusal of the record it becomes quite obvious that no copy of registration certificate either of the management or of the contractor has been filed on the record.

There is even no contract agreement prior to 2006. The relevant paras of Section 7, 12 & 23 are reproduced for ready reference.

#### Section 7:

(a). “Registration of certain establishments — (1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to re-establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment.

(b) Provided that the registering officer may entertain any such application for registration after expiry of the period fixed in this behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time."

(c) If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed.

#### Section 12

(d). Licensing of contractors.—(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer.

(2) Subject to the provisions of this Act, a licence under sub-section (1) may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under Section 35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed."

**Section 23 : Contravention of provisions regarding employment of contract labour.**—Whoever contravenes any provision of this Act or of any rules made thereunder prohibiting, restricting or regulating the employment of contract labour, or contravenes any condition of a licence granted under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention."

It has been held in *Deena Nath Vs. National Fertilizers Limited*; 1992 LLR 46 (SC) that consequences of non-compliance with the provisions of Section 7 or Section 12 is penal. While engaging contract workers particular attention should be paid to Section 7 and 12. Any engagement of contract labours without complying with the provisions of Section 7 and 12 has been declared punitive by Section 23 and there is specific law as referred to above which makes the action penal. Therefore, engaging workers on contract basis may attract the penal provision and if the contract worker is engaged for the work of the Principal Employer, such workman may be regularized in view of 2001 (6) Supreme 602, *Steel Authority of India Limited & Ors. Vs. National Union Water Front Workers & Ors.*

(g). Section 7 & 12 of the Contract Labour (Regulation & Abolition) Act, 1970 are to be complied with. Breach of these provisions will invoke penal Section 23 of the said Act which postulates that in case of breach of Section 7 & 12 penal provision of Section 23 is attracted.

This issue is decided accordingly.

#### Issue No. 4

It was submitted by the management that payment of full back wages is not the natural consequence of the order of discharge or dismissal being set aside. It has been held in (2003) 6 SCC 141 that it is incumbent upon the labour court to decide the quantum of back wages.

It has been further held in this case that payment of back wages having discretionary element involved it is to be dealt with the facts and circumstances of the case. No definite formula can be evolved.

It has been further held in this case that payment of back wages in its entirety is the statutory sanction. In (2003) 4 SCC 27 the Hon'ble Apex Court held that in view of delay in raising the dispute and initiating the proceedings back wages need not be allowed. In the instant case there is no delay at least on the part of the workman in raising the dispute.

In 1978 Lab IC 1968—three Judges Bench of the Hon'ble Apex Court held that payment of full back wages is the normal rule. In case services have been illegally terminated either by dismissal or discharge or retrenchment, in such circumstance the workman is entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. In the instant case the workman was always ready to work but he was not permitted on account of invalid act of the employer. In 2005 IV AD SC 39—three Judges Bench of the Hon'ble Apex Court held that reinstatement with full back wages is justified. In this case the workman has performed more than 240 days work and he has been retrenched without payment of compensation and pay in lieu of notice.

It was submitted from the side of the management that statement is not the only remedy. In such cases the workman may be given compensation. Section 11 A of the IDs Act, 1947 provides that in case of dismissal or discharge is found illegal reinstatement should be ordered. It has been held in a catena of cases by the Hon'ble Apex Court that reinstatement with full back wages is the normal rule. The statute provides for reinstatement. In certain exceptional cases where the undertaking has been closed down or it has become sick there may be order for payment of compensation.

In view of the facts and circumstances of the case the workman is entitled to 50% back wages. This issue is decided accordingly.

#### Issue No. 5

The workman is entitled to reinstatement with 50 per cent back wages w.e.f. the date of his termination from service.

The reference is replied thus :—

The contract awarded by the management of Chief Engineer, Civil Construction Wing, All India Radio, New Delhi to M/s. Om Prakash, Malikpur, Tagore Park, New Delhi, is sham. The management should reinstate the workman applicant along with 50% back wages w.e.f. the date of his termination from the service within two months from the date of the publication of the award.

The award is given accordingly.

Date : 29-07-2007.

R. N. RAI, Presiding Officer

नई दिल्ली, 8 अगस्त, 2007

**का.आ. 2489.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार श्रीमती सुचेता कृपलानी वैद्युत मंडल, सी. पी. डब्ल्यू. डी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, नई दिल्ली के पंचाट (संदर्भ संख्या 77/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-2007 को प्राप्त हुआ था।

[सं. एल-42012/214/2004-आईआर(सीएम-II)]  
अजय कुमार गौड़, डेस्क अधिकारी

New Delhi, the 8th August, 2007

**S.O. 2489.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 77/2005) of the Central Government Industrial Tribunal-Cum-Labour Court, No. 2, New Delhi as shown in the Annexure in the Industrial Dispute between the management of Smt. Sucheta Kriplani Elect. Division CPWD and their workmen, received by the Central Government on 8-8-2007.

[No. L-42012/214/2004-IR (CM-II)]

AJAY KUMAR GAUR, Desk Officer

#### ANNEXURE

#### BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, NEW DELHI

Presiding Officer : R. N. RAI

I.D. No. 77/2005

#### IN THE MATTER OF:—

Shri Ashok Kumar & 4 Others,  
C/o. The General Secretary,  
CPWD Mazdoor Union, E-26, Raja Bazar,  
(Old Qtrs.), Baba Kharak Singh Marg,  
New Delhi-110001.

Versus

The Executive Engineer (E),  
Smt. Sucheta Kriplani Elect. Division, CPWD,  
New Delhi-110001

#### AWARD

The Ministry of Labour by its letter No. L-42012/214/2004-IR(CM-II) Central Government Dt. 04-08-2005 has referred the following point for adjudication.

The point runs as hereunder :—

“Whether the demand of the CPWD Mazdoor Union for reinstatement and regularization of services and equal wages for equal work in respect of Sh. Ashok Kumar, Raj Kumar, Vijay, Dhani Ram and Vicky, Sewer men in the establishment of Central Public Works Department, New Delhi is legal and justified? If yes, to what relief these workmen are entitled and from which date?”

The details of the workmen connected with the dispute are as under :

Sl. No.	Name	Father's Name	Designation	Date of Employment	Date of Termination
1.	Ashok	Sunehri Lal	Sewerman	07-07-95	15-03-04
2.	Raj Kumar	Ram Kishan	Sewerman	15-07-94	15-03-04
3.	Vijay	Rajender	Sewerman	12-07-94	15-01-03
4.	Dhani Ram	Ram Bharose	Sewerman	06-07-95	23-05-03
5.	Vicky	Prem Chand	Sewerman	05-02-97	15-03-04

The workmen applicants have filed claim statement.

It has been stated therein that the above workmen were employed as Sewer men being skilled workmen by the Executive Engineer (Civil), Smt. Sucheta Kriplani Hospital, Division, CPWD, New Delhi through different fake contractors for the work of Sewer man which was/is permanent nature of job.

That the workmen had also filed a Writ Petition in the High Court of Delhi and as per directions of the Hon'ble Court, they were allowed to work under the management and if the contractors were changed, they will be allowed to work as per order of the said Hon'ble High Court of Delhi and their case of regularization and abolition was referred to the Ministry of Labour.

That the duties performed by the workmen are of perennial in nature and the said work cannot be awarded on contract basis.

That the contractors neither have licence for engagement of contract labourers nor the management of CPWD being principal employer procured registration as required under the Contract Labour (Regulation & Abolition) Act, 1970 to engage contract labourers through Contractor thereby violated the provisions of the said Act. Therefore the workmen may be absorbed being direct employees of the management, so as to render all benefits as that of regular employees of the CPWD as law laid down by the Hon'ble Supreme Court in the matter of Secretary, HSEB Vs. Suresh and others. In this case also there was no genuine contract. Hence the workmen on completion of 240 days are entitled to be absorbed with the Management.

That the workmen are direct employees of the management, if the veil is lifted, this Hon'ble Tribunal will come to know how the Government is committing unfair labour practice and run counter to the provisions of Contract Labour (Regulation and Abolition) Act, 1970. Therefore, they may be absorbed being direct employees of Management so as to render all benefits of regular employees by principal employer i.e. management of CPWD as law laid down in Secretary, HSEB Vs. Suresh & Others (1999) 3 SCC by Hon'ble Supreme Court.

That at the moment it may not be out of place to submit that the workmen were doing their duties under the supervision of Junior Engineers and Asst. Engineers of the Management. So far as the so-called contractor was concerned, he has nothing to do with the service rendered

except to pay the meager salary. This is modus operandi to pocket the money by the Government officials, through the contractors. The workmen who have requisite qualifications for the post against which they have been employed, are forced to work more than normal hours but paid nothing. The Hon'ble Supreme Court in one case, i.e. 'Shankar Mukherjee Vs. Union of India 1990 (Suppl.) SCC 668' has heavily come to the authorities who were engaged in employing the contract workers qua perennial nature of work with the following observations.

"It is surprising that more than fifty years after independence the practice of employing labour through contractors by big companies including public sector companies is still being accepted as a normal feature as labour employment. There is no security of service to the workmen and their wages are far below than that of the regular workmen of the company. The Supreme Court in its earlier decisions had disapproved the system of direct contract and above holding it to be 'archaic' primitive and of 'baneful nature'. The system which is nothing but an improved version of bonded labour is sought to be abolished. The act is an important piece of social legislation for the welfare of labourers and has to be liberally construed."

The CPWD daily rated workers in all the categories have been getting their wages in minimum of time scale plus DA, ADA, HRA, CCA, IR except increment. Now these workers are also entitled to the wages fixed in the minimum of time scale from the date of their initial employment being unskilled, semi-skilled, skilled and highly skilled workmen. Copy of the orders issued by the CPWD is annexed as Annexure—I.

That as per the judgment of the Hon'ble Supreme Court in the matter of Surender Singh and others, the daily rated workers are also entitled to be regularized in the time scale after completion of 6 months of their continuous service.

That all the workmen connected with the dispute are having sufficient experience for working as skilled workmen with the management of CPWD for regularization of their services.

That the Ministry of Labour in exercise of powers conferred by Sub-section (1) of Section 10 of the Contract Labour (Regulation and Abolition) Act 1970 (37 of 1970), the Central Government, in consultation with the Central Advisory Contract Labour Board, prohibited the employment of the contract labour in the process, operation of work specified in the Schedule, in the office/establishment of Central Public Works Department Ministry of Urban Development and Employment, New Delhi and the Notification for prohibiting the employment of Khalasi etc. were notified by the Ministry of Labour Notification dated 31-07-2002 in the Extra-Ordinary Gazette of the Government of India in para II Section 3 and Sub-section (2). Copy of the said Notification is annexed as Annexure-II.

That as per notification dated 21-07-02 of Ministry of Labour, New Delhi prohibits the employment of contract

labour in the office/establishment of CPWD w.e.f. the date of publication namely :

- (i) Air Conditioner Mechanic
- (ii) Air Conditioner Khalasi/Helper
- (iii) Electrician
- (iv) Wireman
- (v) Khalai (Electrical)
- (vi) Carpenter
- (vii) Mason
- (viii) Fitter
- (ix) Plumber
- (x) Helper/Beldar
- (xi) Mechanic
- (xii) Sewer-man
- (xiii) Sweeper
- (xiv) Foreman

That after the said Notification, the workmen of Sewer-man (skilled) who are covered in employment as referred herein above were to be treated as direct employment of the management of CPWD and their status is of a daily rated workers directly employed by the management.

That it is proved that the work on which the workmen had been performing their duties cannot be handed over to the contractors, so they have to be treated in direct employment of CPWD and their status are of daily rated worker directly employed by the management.

That after the abolition of contract on the employment of sewerman, the workmen connected with the dispute have to be treated as employees of the CPWD but the management terminated the services of S/Shri Vijay w.e.f. 15-1-03 and Dhani Ram w.e.f. 23-5-03 without following the procedures of law and at the time of termination the workmen have completed more than 240 days in each of the calendar year and the management did not serve one month notice or notice pay in lieu of notice, compensation etc. at the time of termination of their services.

That the CPWD Mazdoor Union has raised the dispute in respect of these workmen on 29-05-03 before Conciliation Officer-cum Assistant Labour Commissioner (Central) for regularization of services of all the workmen and against termination of Shri Vijay and Dhani Ram w.e.f. 15-1-03 and 23-05-03 respectively and during the pendency of dispute before the said Conciliation Officer, the management also terminated the services of workmen Shri Ashok Kumar, Raj Kumar and Vicky w.e.f. 15-03-04 without any prior permission from the said Conciliation Officer so the Management of CPWD has violated the Section 33 of ID Act 1947 and the workmen have also completed more than 240 days in each of the calendar year and the management did not serve one month notice or one month pay in lieu of notice, compensation in respect of these workmen also at the time of termination.

That after termination of the services of workmen, new hands were recruited on the same work of sewerman which action of the management is also illegal, as well as unjustified.

That the workmen are unemployed since the date of termination of their services so they are entitled to be reinstated with full back wages, continuity of services along with all consequential benefits.

That the demands of the CPWD Mazdoor Union for reinstatement and regularization of services and equal pay for equal work in respect of S/Shri Ashok Kumar, Raj Kumar, Vijay, Dhani Ram and Vicky as Sewer-men in the Establishment of CPWD is legal and justified.

That all the workmen connected with this dispute have to be treated as workmen of CPWD and their status of a daily-rated workmen till regularization of their services and the pay scale of sewerman prior to 01-01-96 was Rs. 950-1500 and revised w.e.f. 01-01-96 in the pay scale of Rs. 3050-4590.

That the workmen connected with this dispute had been performing their duties equal to the regular sewerman as well as daily rated workman employed on muster roll or hand receipt so these workmen are entitled for equal pay for equal work from the date of their initial employment as per the order of the management of CPWD and also entitled for regularization in the pay scale attached to the said category.

The Management has filed written statement. In the written statement it has been stated that the demand of the Union for absorption registration the services of workmen namely Shri Ashok S/o Shri Sunchari Lal, Shri Raj Ram S/o Shri Ram Kishan, Shri Vijay, S/o Shri Rajender, Shri Dahni Ram, S/o Shri Ram Bharose, Shri Vicky, S/o Shri Prem Chand is totally unjustified, unfair and illegal.

In this connection it is to inform that CPWD is awarding works to various contractors depending upon the exigencies of the work. The contractor in turn are employing labour either on daily basis or permanent basis. Hence the workers are employees of the contractor and not of the Government of India but it is ensured that they are paid minimum wages as per circulars issued by Government of Delhi. In the recent judgment, Hon'ble Supreme Court of India has given decision that labour employed on contract cannot be treated as Government servant for appointment. Hence, they are not entitled to any relief whatsoever from the department.

It is submitted that the sewerman are not employed by Executive Engineer (Civil), SSK Hospital Division but the services of maintenance of sewerage system was taken from contractors as and when required. The services to carry out the maintenance of sewer lines, manholes and other complaints are entrusted to various contractors as and when required and not as permanent nature of job.

It is submitted that the management is having sanctioned strength of work charges staff for maintenance works and hence engaging of workers on perennial basis does not arise. The contracts are awarded as and when required due to exigencies of the work.

It is submitted that no such sanction to engage workers from contractors, neither any licence is required to be obtained for engaging the contractor or his workmen by CPWD as work is being done to maintain essential services of hospital in public interest. The establishment for Principal Employer and Industrial Labour act comes into force only if contractor employees as more than 20 workers at a time on a particular work. Since the workers were engaged by the contractor, the question of absorption in the department does not arise.

It is denied that the management is committing any unfair labour practice as alleged or at all. The workmen are not the employees of the management and they have been employed by the contractor who is maintaining all relevant records pertaining to such workmen. The workmen are not entitled to any regularization or to be absorbed in the regular establishment of the management.

It is submitted that the services to maintain sewer line system was taken under the supervision of the contractor and not under the Junior Engineers/Assistant Engineers. Junior Engineers and Assistant Engineers were only giving instructions to the contractor to maintain the sewerage system. Government cannot give permanent job to all the workers employed by the contractor.

It is submitted that the comparison of Government workers and contract labour in terms of salary cannot be justified, as Government workers have been properly recruited and entitled salary as per service conditions. The contract labour is entitled for minimum wages only.

It is submitted that the department is taking service to maintain sewer line and drainage system as per day to day requirement in the hospital through contract. In view of this it is clear that the department is not engaging sewermen directly.

The workmen applicants have filed rejoinder. In the rejoinder they have reiterated the averments of their claim statement and have denied most of the paras of the written statement. The management has also denied most of the paras of the claim statement.

Evidence of both the parties has been taken.

Heard argument from both the sides and perused the papers on the record.

Form perusal of the pleadings of the parties the following issues arise for determination :—

1. Whether there is employer-employee relation between the management and the workman.
2. Whether the workmen are entitled to reinstatement/regularization?
3. Whether the workmen are entitled to get Equal Pay for Equal Work w.e.f. date of engagement?
4. Whether the breach of Section 7 and 12 of the Contract Labour (Regulation & Abolition) Act, 1970 is punitive?
5. To what relief the workmen are entitled?

**Issue No. 1**

It was submitted from the side of the workmen that Shri Ashok was engaged on 07-07-1995, Shri Raj Kumar was engaged on 15-07-1994, Shri Vijay was engaged on 12-07-1994, Shri Dhani Ram was engaged on 06-07-1995 & Shri Vicky was engaged on 05-02-1997.

It is also admitted that the services of these workmen were terminated while they raised dispute before the AL(C).

It was further submitted that the workmen worked under the fake contractors. No licence for engagement of contract labours has been filed either by the fake contractors or by the management.

It is true that the management has not filed any contract agreement with the record. So it cannot be said that really an agreement has been entered into between the management and the contractors. However, the management has taken the plea that the workmen worked under the contractors. They have not been engaged directly by the management. The workmen have also not filed any paper to show that they were engaged initially or at any point of time by the management.

The workmen have filed the photocopies of the workers diaries issued by the management to the workmen. These workers diaries have not been issued by the contractor. Day to day work done by the different workmen has been entered into these diaries. The complaint received has also been mentioned in the diaries. No contractor has come in picture in any of the pages of the diary.

MWI has admitted that the complaints received from Smt. Suchetra Kripalani Hospital are noted down by the Clerk of the CPWD and these complaints are forwarded to the workmen directly.

MWI has admitted as under in his cross-examination :

“It is correct that whenever the complaints were made by the staff of Smt. Suchetra Kripalani Hospital and the same complaints have been noted by the inquiry clerk of the CPWD. The major complaints are noted and the minor complaints are received on telephone.”

“It is correct that the complaints were forwarded to the contractor's labour through their complaint book.”

“It is correct that the maintenance of sewerage is with the CPWD. It is correct that the maintenance of sewerage is still continuing. The maintenance work prepared by the contractor is supervised by the Jr. Engineer. The maintenance of sewerage of Smt. Suchetra Kripalani Hospital is done by the CPWD.

This witness has also admitted that employment of Contract Labour or sewerage has been prohibited by the Ministry of Labour by notification dated 31-07-2002. These workmen have been continued even after abolition of contract labour for sewerage and the management witness has admitted that sewerage work is still done through

contractor. It indicates that the management of CPWD is not even following the notification of prohibition of contract labour for sewerage by the CPWD.

MWI has admitted that complaints are noted down in the worker's diaries and the same are forwarded to the contractors workmen directly. The contractor does not come in picture anywhere. The Inquiry Clerk of the CPWD takes down complaints in the complaint books kept for different parts of the hospital and the same are forwarded to the contractor workers directly. It implies that the contractor workers are working under the control and guidance of the CPWD. It appears that the contractor workers daily went to the office of the CPWD and they received the workers diaries and they acted upon on the directions of the management.

MWI has also admitted that the maintenance of sewerage of Smt. Suchetra Kripalani Hospital is with the CPWD. The CPWD has been entrusted the maintenance of sewerage system of Smt. Suchetra Kripalani Hospital. so the sewerage work is the work of CPWD. It is not the work of any contractor. It has been held in Steel Authority of India that a contractor can engage workers for his own work and not for the work of any other.

It has been held in Steel Authority of India as under :—

“Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workmen. But where a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contract is a mere camouflage as in Hussainabhai Calicut's case (supra) and in Indian Petrochemicals Corporation's case (supra) etc; if the answer is in the affirmative, the workmen will be in fact an employee of the principal employer, but if the answer is in the negative, the workmen will be contract labourer.”

In the instant case the workmen have not been hired in connection with the work of a contractor but they have been hired by the contractor for the work of the respondents. So in the instant case there is contract of service between the principal employer and the workmen. In view of the judgment the workmen become the employees of the management.

The Constitution Bench Judgment of Steel Authority of India is squarely applicable in the instant case. In JT 2001 (7) SC 268 it has been held that “121 (5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of Contract Labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the

ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned."

It has been held in this case that whether there is prohibition of contract labour or otherwise the industrial adjudicator will have to consider the question and in case the contract appears ruse and camouflage to evade compliance with various beneficial legislations the so called contract labour will have to be treated as the employee of the principal employer and he shall be directed to regularize the services of the contract workers.

Engagement of contract workers for perennial and regular nature of job is prohibited. The sewerage function is a perennial nature of job. So long as the respondents exists there would be need of sewer men for them, so the work is of existing, continuous and perennial in nature for such work contract workers cannot be employed.

According to well reorganization definition of contract it is an agreement for a given result. The result should be visible. Contract labourers can be engaged for the work of contractor only and not for the work of any establishment. In the present case the work is of the establishment and not of the contractor. The term supply of labour by a contractor is against human dignity. No one can be a supplier of human labour to any establishment. It is the duty of State to give employment to citizen and not of the contractors. Contractors cannot supply labour to any establishment.

In view of the above discussion it becomes quite obvious that the contractors workmen in the instant case have been retained all along and contractors have been changed. So the contractor is only a label of a bottle. This label is changed from time to time but the contents of the bottle always remain the same. The contractors have been changed and the workmen have been retained. Such a system is in-human. The contractors are the direct employees of the respondent/management.

In (1993) 3 SCC 601, the Hon'ble Apex Court has held as under :—

"In order to keep such plants and stations clean, the board awarding contracts to contractors—Under such a contract, one of the contractors was required to engage a certain minimum number of Safai Karamcharis for cleaning the Main Plant Building at Panipat for a period of one year—Services of Safai Karamcharis so engaged, terminated after they had worked for more than 240 days in the said establishment under the supervision and administration of the Board—Relief—On facts the contractor found only to be a name lender and that there was no genuine contract

with him—In such circumstances, High Court rightly lifted the veil and held the said Safai Karamcharis to be employees of the Board and therefore, entitled to reinstatement without resort to S.10 of the Contract Labour (Regulation & Abolition) Act, 1970."

In this case also the contract labours were engaged under bogus contract and Hon'ble Apex Court held that the workmen were entitled to reinstatement as there is no genuine contract. In the instant case also there is no genuine contract.

It has been held in 2003 Lab I IC 2630 as under :—

"Fact that work of gardener is not integral part of industry of company - Does not make them any the less employees of company when they were employed with company to work in its premises."

From perusal of this case law it becomes quite vivid that in case a workman is working in the premises of the management he shall be deemed to be an employee of the management.

It has been held in (2004) ISC 127 as under :—

"Integration" test is one of the relevant tests. It is applied by examining whether the person was fully integrated into the employer's concern or remained apart from and independent of it. The other factors which may be relevant are—who has the power to select and dismiss, to pay remuneration, deduct insurance contributions, organize the work, supply tools and materials and what are the mutual obligations between them."

It has been further held in Secretary, Haryana State Electricity Board and Suresh & Others as under :—

"When contract workers carry out work of perennial nature, contract labour system gets abolished—If contract labour is for seasonal work, question of abolition would not arise—If so called contractor was mere name lender, who procured labour for appellant Board, as broker, Board was principal employer—So called contract was mere camouflage which concealed real relationship of employer—employee."

From perusal of the judgment cited above it becomes quite vivid that contract labours cannot be engaged for a work of perennial nature and of sufficient duration. Section 10 of Contract, Labour (Regulation & Abolition) Act, 1970 prohibits such employment.

It has been held in the case of Donovan Vs. Laing, Wharton and Down Construction Syndicate as under :—

"It is not always correct to say that persons appointed and liable to be dismissed by an independent contractor can in no circumstances be the employees of the third party."

From the foregoing it becomes quite obvious that names of the workmen mentioned in the chart of the claim have been working regularly and even without artificial breaks since 1994-95. The contract is camouflage. There is

direct relation of master and servant between the respondent and the workmen. This issue is decided accordingly.

### Issue No. 2

It was submitted from the side of the workmen that in Constitution Bench Judgment 2006 (4) Scale a direction has been given to regularize the workmen who have worked for more than 10 years subject to availability of the post. From perusal of the chart of the workmen it becomes quite obvious that all the workmen have been working from 1994-95. The workmen have performed 10-12 years service. In such circumstances in case they are not regularized they will be superannuated as daily rated workers. The CPWD is a State under Article 12 of the Constitution of India and it is bound to follow the constitutional mandates. Article 39 (d) of the Constitution is as under :—

“Article 39.

Art. 39. The State shall, in particular, direct its policy towards securing—

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.”

Article 39 of the Constitution is directory in nature. It comes under the directive principles of state policy and it has been enshrined therein that every state will endeavor to give employment to its citizens.

These workmen have been working for 10 years but no attempt has been made to regularize their service. Endeavor of giving employment does not mean employment of daily rated workers. Even in the Constitution Bench Judgment the Government has been directed to regularize the services of the workmen who have worked for more than 10 years.

In the facts and circumstances of the case the workmen deserve regularization after 10 years of their initial engagement.

The management should reinstate and regularize the workmen and pay them Equal Pay of a regularly selected employee after regularization. This issue is decided accordingly.

### Issue No. 3

It was submitted that in view of Surinder Singh's case the workmen are entitled to Equal Pay for Equal Work from the initial date of their engagement.

In the instant case the workmen were initially engaged through contractor and they have been paid minimum wages by the contractor or the management. so the principles laid down in Surinder Singh's case of the Hon'ble Apex Court is not applicable in this case. The workmen were initially engaged as contract labour and payment to them have been made according to the provisions. They have been declared to be the employees of the master employer in this case. So they are entitled to get equal pay for equal work after reinstatement/regularization and not prior to that when they were engaged as contract labours.

It has been held in 1998 II LLJ 633 by the Hon'ble Apex Court as under :—

“Equal Pay for Equal Work” principle—If there is clear-cut difference in recruitment qualifications, regarding experience as well as educational qualification, between two sets of employees, there cannot be automatic linkage and parity of treatment for retrospective revision of pay scales—To grant relief in such circumstances would result in reverse discrimination in favour of claimants to relief.

The workmen were initially engaged by the contractor without considering their educational qualification etc. So they cannot be placed at par with regularly selected workmen.

It has been held in (2003) 6 SC 123 as under :—

“The principle of equal pay for equal work” is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by different persons in different organizations, or even in the same organization. It is a concept which requires for its applicability complete and wholesale identity between a group of employees claiming identical pay scales and the other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula.

From perusal of this judgment of the Hon'ble Apex Court, it becomes quite obvious that after establishing complete and wholesale identity, identical pay scales can be decided. The workmen were engaged as contract workers initially, so they cannot be placed at par with the employees appointed on a regular basis. They have been paid wages as per the provisions existing at present. The workmen are entitled to Equal Pay for Equal Work after their reinstatement and regularization.

It has been held in AIR 1986 SC 584 as under :—

“Surinder Singh and another Petitioners Vs. The Engineer in Chief CPWD and others Respondents—Constitution of India, Art.39—“Equal Pay for Equal Work”—Doctrine of, is required to be applied to persons

employed on a daily wage basis—they are entitled to same wages as are paid to similarly employed employees.”

The workmen are not daily wagers and they are not performing duties along with the regular employees. They were initially engaged as contract labours. Contract is camouflage and ruse, so they have been declared to be the employees of the principal employer. Hence they are entitled to equal pay for equal work after reinstatement and regularization. This issue is decided accordingly.

#### Issue No. 4

It was submitted from the side of the workmen that the respondents are State under Article 12 of the Constitution of India. They are not complying with the relevant provisions of Section 7 & 12 of Contract Labour (Regulation & Abolition) Act, 1970.

Section 23 of the said Act, 1970 is punitive for the breach of Section 7 & 12.

It was further submitted that neither the contractor nor the management has got themselves registered under Section 7 of the Act, 1970 and they have filed no document on the record.

From perusal of the record it becomes quite obvious that no copy of registration certificate either of the management or of the contractor has been filed on the record.

There is even no contract agreement prior to 2006. The relevant paras of section 7, 12 & 23 are reproduced for ready reference.

#### Section 7:

(a) “Registration of certain establishments—(1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate government may, by notification in the Official Gazette, fix in this behalf with respect to re-establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment :

(b) Provided that the registering officer may entertain any such application for registration after expiry of the period fixed in this behalf, if the registering officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.”

(c) If the application for registration is complete in all respects, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed.

#### Section 12 :

Licensing of contractors.—(1) With effect from such date as the appropriate government may, by notification in

the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer.

Subject to the provisions of this Act, a licence under sub-section (1) may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate government may deem fit to impose in accordance with the rules, if any, made under section 35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed.

**Section 23 : Contravention of provisions regarding employment of contract labour.**—Whoever contravenes any provision of this Act or of any rules made thereunder prohibiting, restricting or regulating the employment of contract labour, or contravenes any condition of a licence granted under this Act, shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both, and in the case of a continuing contravention with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

It has been held in *Deena Nath Vs. National Fertilizers Limited*; 1992 LLR 46 (SC) that consequences of non-compliance with the provisions of section 7 or section 12 is penal. While engaging contract workers particular attention should be paid to section 7 and 12. Any engagement of contract labours without complying with the provisions of section 7 and 12 has been declared punitive by section 23 and there is specific law as referred to above which makes the action penal. Therefore, engaging workers on contract basis may attract the penal provision and if the contract worker is engaged for the work of the Principal Employer, such workman may be regularized in view of 2001 (6) Supreme 602, *Steel Authority of India Limited & Ors. Vs. National Union Water Front Workers & Ors.*

Section 7 & 12 of the Contract Labour (Regulation & Abolition) Act, 1970 are to be complied with. Breach of these provisions will invoke penal section 23 of the said Act which postulates that in case of breach of section 7 & 12 penal provision of section 23 is attracted. This issue is decided accordingly.

#### Issue No. 5.

From the findings of the above issues it becomes quite obvious that there is master and servant relationship between the respondent and the workmen. The workmen have become direct employees of the respondent. The management should reinstate and regularize the workmen within two months from the date of the publication of the award and pay them equal pay of regularly selected Class—D employees.

The reference is replied thus :—

The demand of the CPWD Mazdoor Union for reinstatement and regularization of services and equal wages for equal work in respect of Sh. Ashok Kumar, Raj Kumar, Vijay, Dhani Ram and Vicky, Sewermen in the establishment of Central Public Works Department, New Delhi is legal and justified. The management should reinstate and regularize the workmen S/Shri Ashok, Raj Kumar, Vijay, Dhani Ram & Shri Vicky all Sewermen and pay them equal pay for equal work, equal to the regularly selected candidate within two months from the date of the publication of the award.

Award is given accordingly.

Date : 31-07-2007.

R. N. RAI, Presiding Officer

नई दिल्ली, 8 अगस्त, 2007

का.आ. 2490.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोम्बारा एविएशन लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली-II के पंचाट (संदर्भ संख्या 28/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-8-2007 को प्राप्त हुआ था।

[सं. एल-11012/22/2006-आईआर(सीएम-I)]

स्नेह लता जवास, डेस्क अधिकारी

New Delhi, the 8th August, 2007

S.O. 2490.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2006) of the Central Government Industrial Tribunal-Cum-Labour Court, New Delhi-II now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Combata Aviation Ltd., and their workman, which was received by the Central Government on 7-8-2007.

[No. L-11012/22/2006-IR (CM-I)]

SNEHLATAJAWAS, Desk Officer

#### ANNEXURE

**BEFORE THE PRESIDING OFFICER,  
CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL-CUM-LABOUR  
COURT-II, NEW DELHI**

**Presiding Officer : R. N. RAI**

**I.D. No. 28/2006**

#### PRESENT

None	—	1st Party
Sh. A. K. Srivastava	—	2nd Party

#### IN THE MATTER OF :—

Shri Ramesh Chand,  
C/o The President,  
Cambata Aviation Karamchari Union,  
H. No. 407, Main Road,  
Baghdola Village,  
New Delhi-110045.

*Versus*

The Manager,  
M/s. Cambata Aviation Pvt. Limited,  
BAY—81, Line Maintenance,  
Block—A, IGI Airport,  
New Delhi.

#### AWARD

The Ministry of Labour by its letter No. L-11012/22/2006-IR (CM-I) Central Government Dt. 01-06-2006 has referred the following point for adjudication.

The point runs as hereunder :—

“Whether the action on the part of the management of Cambata Aviation in terminating the services of the workman Shri Ramesh Chand w.e.f. 14-07-2005 is just, fair and legal? If not, to what relief is the concerned workman entitled.”

At the stage of evidence of the management the matter was negotiated. The workman has filed application dated 30-07-2007. In the application it has been mentioned that he is withdrawing his case. All the payments are made to him and No Objection Certificate is issued in the light of the terms and conditions of this application. The seal and sign of the management have been obtained. The management promised to issue No Objection Certificate and finalized the matter. There remains no dispute to be adjudicated upon in view of the compromise between the parties.

No dispute award is given.

Date : 31-07-2007.

R. N. RAI, Presiding Officer

नई दिल्ली, 8 अगस्त, 2007

का.आ. 2491.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 62/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/259/1998-आई आर(बी-I)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 8th August, 2007

**S.O. 2491.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 62/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 8-8-2007.

[No. L-12012/259/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

# **ANNEXURE**

## **BEFORE THE CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI**

Wednesday, the 31st January, 2007

**PRESENT:**

**K. JAYARAMAN, Presiding Officer**

**Industrial Dispute No. 62/2004**

**(Principal Labour Court CGID No. 84/99)**

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen].

# **BETWEEN**

Sri N. Marimuthu : I Party/Petitioner

**AND**

The Assistant General Manager, : II Party/Management  
State Bank of India,  
Z. O. Madurai.

# **APPEARANCE**

For the Petitioner : Sri V. S. Ekambaram,  
Authorised Representative

For the Management : Mr. D. Mukundan,  
Advocate

# **AWARD**

The Central Government Ministry of Labour, vide Order No. L-12012/259/98-IR (B-I) dated 5-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 84/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 62/2004.

2. The Schedule mentioned in that order is as follows:

“Whether the demand of the workman Shri N. Marimuthu, wait list No. 304 for restoring the wait list of temporary messengers in the establishment of

State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Karaikudi branch from 25-8-1983. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Karaikudi branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a Class IV employee. From 25-8-83, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Karaikudi branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank.

it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bonafide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 304 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees

were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 304 he was not appointed. The said settlements were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has

no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 304 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

**Point No. 1:**

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored

by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees' Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of

the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but

there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/ published even after the Court order in WMP No. 11932/91 in W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees,

the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank

has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I. Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of

Sections 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 11 LJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 11 LJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation

proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOP WORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference

is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VAN SAG NATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K.V. VIJESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary

employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the "decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to

exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued

permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners

cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Government in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

**Witnesses Examined :—**

For the Petitioner	WW1 Sri N. Marimuthu WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri M. Perumal

**Documents Marked :—**

Ex. No.	Date	Description
W1	1-8-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-4-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-4-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	1-5-91	Xerox copy of the advertisement in The Hindu on daily Wages based on Ex. W4.
W5	20-8-91	Xerox copy of the advertisement in The Hindu extending Period of qualifying service to daily wagers.
W6	15-3-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up to vacancies of messenger posts.
W7	25-3-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	Nil	Xerox copy of the service certificate issued by Karaikudi branch.
W10	15-10-93	Xerox copy of the service certificate issued by Karaikudi branch.
W11	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre & service conditions.
W12	Nil	Xerox copy of the Reference book on Staff matters Vol III consolidated upto 31-12-95.
W13	6-3-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W14	6-3-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W15	6-3-97	Xerox copy of the letter from Madurai zonal office for interview of messenger post—J. Velmurugan.

Ex. No.	Date	Description
W16	17-3-97	Xerox copy of the service particulars—J. Velmurugan.
W17	26-3-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi
W18	31-3-97	Xerox copy of the appointment order to Sri. G. Pandi.
W19	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February. 2005 wait list No. 395 of Madurai Circle.
W20	13-2-95	Xerox copy of Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W21	9-11-92	Xerox copy of the Head Officer circular No. 28 regarding Norms for sanction of messenger staff.
W22	9-7-92	Xerox copy of the Minutes of the Bipartite meeting.
W23	9-7-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W24	7-2-96	Xerox copy of the local Head Office circular about Conversion of part time employees and redesignate them as general attendants.
W25	31-12-85	Xerox copy of the local Head Office circular about Appointment of temporary employees in subordinate cadre.

**For the Respondent/Management :—**

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-7-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	9-1-91	Xerox copy of the settlement.
M5	30-7-96	Xerox copy of the settlement.
M6	9-6-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-5-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-5-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
M9	10-7-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Madurai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 8 अगस्त, 2007

का.आ. 2492.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इण्डिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 80/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/235/1998-आई अर(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 8th August, 2007

S.O. 2492.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 8-8-2007..

[No.L-12012/235/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

#### PRESENT

K. Jayaraman, Presiding Officer

Industrial Dispute No. 80/2004

(Principal Labour Court CGID No. 221/99)

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

#### BETWEEN

Sri P. Paulchamy : I Party/Petitioner

#### AND

The Assistant General Manager, : II Party/Management  
State Bank of India,  
Z. O. Madurai.

#### APPEARANCE

For the Petitioner : Sri V.S. Ekambaram,  
Authorised Representative

For the Management : Mr. D. Mukundan,  
Advocate

#### AWARD

The Central Government, Ministry of Labour, vide Order No. L-12012/235/98-IR (B-I) dated 19-3-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken

the dispute on its file as CGID No. 221/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 80/2004.

2. The Schedule mentioned in that order is as follows :

"Whether the demand of the workman Shri P. Paulchamy, wait list No. 322 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Periyakulam branch from 27-7-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Periyakulam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 27-7-82, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Periyakulam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his

non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G & 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bonafide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-07-88, 07-10-88, 9-1-91 and 30-7-96. The said

settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I.D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 322 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B, and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-1997 for filling up vacancies which were to arise upto 31-12-1994. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 322 he was not appointed. The said settlements were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary

employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated that all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W.P.No.7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :

- (i) "Whether the demand of the Petitioner in Wait List No. 322 for restoring the wait list of temporary messengers. In the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

#### Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (Civil) of 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for

the Petitioner contended that in 1996 LAB & IC 2248 CENTRAL BANK OF INDIA Vs. S. SATYAM AND OTHERS the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex.W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex.M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B & C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex.M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex.W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex.W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex.M 10 in this case. Those candidates under Ex.M10 were found suitable for appointment as messengers and sweepers. Even MW 1 is unable to say as to when the wait list Ex.M10 was prepared, but it is mentioned in Ex.M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex.M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to

MW1 wait list under Ex.M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P.No.7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combing equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex.M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex.M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 & 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex.M 10 namely wait list is not inconformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 in W.P.No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in 'The Hindu' dated 1-8-88. Furthermore, wait list under Ex.M10 does not carry particulars about the candidates, date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M 10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave

vacancy was used as a device to take them out of the principal clause 2 (oo) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. SINGH Vs. RESERVE BANK OF INDIA AND OTHERS wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex.M 10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 in W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence

of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION Vs. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION wherein the Supreme Court has held "that the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further, argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned senior counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the ID. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bonafide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per

length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bonafide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 ASSOCIATED GLASS INDUSTRIES LTD. Vs. INDUSTRIAL TRIBUNAL A.P. AND OTHERS wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 ASHOK AND OTHERS Vs. MAHARASHTRA STATE TRANSPORT CORPORATION AND OTHERS wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. LTD. Vs. PRESIDING OFFICER AND OTHERS wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the

first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 NATIONAL ENGINEERING INDUSTRIES LTD. Vs. STATE OF RAJASTHAN AND OTHERS wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list Number given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Government is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as alleged by the Petitioner and not reinstatement as

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 SECRETARY, KOLLAM JILLA HOTEL AND SHOPWORKERS UNION Vs. INDUSTRIAL TRIBUNAL, KOLLAM wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into

the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 VANSAGNATHAN ORIENT PAPER MILLS Vs. INDUSTRIAL TRIBUNAL & ORS. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. SAMBANTHAN Vs. PRESIDING OFFICER, LABOUR COURT, MADRAS, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 UNION OF INDIA AND OTHERS Vs. K. V. VIJESH wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears

in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 SYNDICATE BANK & ORS. Vs. SHANKAR PAUL AND OTHERS wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and, therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 SHANKARSAN DASH Vs. UNION OF INDIA wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 STATE OF HARYANA AND ORS. Vs. PIARA SINGH AND OTHERS wherein the Supreme Court has held that "now coming to the direction that all those ad-hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad-hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door (c) he was not eligible and qualified for the post at the time

of his appointment (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad-hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of Lower Courts. He further relied on the "decision reported in 1997 II SCC 1 ASHWANI KUMAR AND OTHERS Vs. STATE OF BIHAR AND OTHERS wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad-hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 HIMANSHU KUMAR VIDYARTHI & ORS. Vs. STATE OF BIHAR AND ORS. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts,

their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp.) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Any how, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and, therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 SECRETARY, STATE OF KARNATAKA Vs. UMA DEVI, the Supreme Court has held that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad-hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee..... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 NATIONAL FERTILIZERS LTD. AND OTHERS Vs. SOMVIR SINGH, wherein the

Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 MUNICIPAL COUNCIL, SUJANPUR Vs. SURINDER KUMAR, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 MADHYA PRADESH STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION Vs. S.C. PANDEY wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the

Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No Costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

#### Witnesses Examined :

For the Petitioner	WW1 Sri P. Paulchamy WW2 Sri V. S. Ekambaram
For the Respondent	MW1 Sri C. Mariappan MW2 Sri M. Perumal

#### Documents Marked :—

Ex. No.	Date	Description
W1	1-8-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-4-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-4-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.

Ex. No.	Date	Description
W4	1-5-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-8-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-3-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up to vacancies of messenger posts.
W7	25-3-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding indentification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	Nil	Xerox copy of the service certificate issued by Periyakulam branch.
W10	Nil	Xerox copy of the service certificate issued by Devadanapatti branch.
W11	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respodent/Bank regarding recruitment to subordinate cadre & service conditions.
W12	Nil	Xerox copy of the reference book on Staff matters Vol III consolidated upto 31-12-95.
W13	6-3-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—V. Muralikannan.
W14	6-3-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—K. Subburaj.
W15	6-3-97	Xerox copy of the call letter from Madurai Zonal Office for interview of messenger post—J. Velmurugan.
W16	17-3-97	Xerox copy of the service particulars—J. Velmurugan.
W17	26-3-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W18	31-3-97	Xerox copy of the appointment order to Sri. G. Pandi.

Ex. No.	Date	Description
W19	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W20	13-2-95	Xerox copy of Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W21	9-11-92	Xerox copy of the Head Office circular No. 28 regarding norms for sanction of messenger staff.
W22	9-7-92	Xerox copy of the minutes of the Bipartite meeting.
W23	9-7-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W24	7-2-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W25	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

**For the Respondent/Management :—**

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-7-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	9-1-91	Xerox copy of the settlement.
M5	30-7-96	Xerox copy of the settlement.
M6	9-6-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-5-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-5-98	Xerox copy of the order in O. P. No. 2787/97 of High Court of Orissa.
M9	10-7-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Madurai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 and 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 8 अगस्त, 2007

का. आ. 2493.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 79/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/289/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 8th August, 2007

S. O. 2493.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 79/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 08-8-2007.

[No. L-12012/289/1998-IR (B-I)]  
AJAY KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

#### PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE NO. 79/2004

(Principal Labour Court CGID No. 220/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

#### BETWEEN

Sri K. Natarajan : I Party/Petitioner

#### AND

The Assistant General : II Party/Management  
Manager,  
State Bank of India,  
Zonal Office,  
Madurai

#### APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,  
Authorised Representative

For the Management : Mr. D. Mukundan, Advocate

#### AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/289/98-IR(B-I) dated 19-3-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 220/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 79/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri K. Natarajan, wait list No. 228 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Karaipatti branch from 6-1-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kariapatti branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 6-1-1984, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Aruppukottai

branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I.D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with

ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was waitlisted as candidate No. 228 in waitlist of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 228, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout

the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 228 for restoring the wait list of

temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

- (ii) "To what relief the Petitioner is entitled?"

#### Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for

appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further,

according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wagers in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(o) of the I. D. Act, 1947. Though the Petitioner's

work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial

Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I. D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I. Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement

entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been

arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held

that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in *Express Newspapers P. Ltd.* case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 *Union of India and Others Vs. K. V. Vijeesh* wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 *Syndicate Bank & Ors. Vs. Shankar Paul and Others* wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion

of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 *Shankarsan Dash Vs. Union of India* wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 *State of Haryana and Ors. Vs. Piara Singh and Others* wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of an without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned

directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his

appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. .... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujampur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

#### Witnesses Examined :

For the Petitioner : WW1 Sri K. Natarajan  
WW2 Sri V. S. Ekambaram  
For the Respondent : MW1 Sri C. Mariappan  
MW2 Sri M. Perumal

#### Documents Marked :

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	03-08-88	Xerox copy of the service certificate issued by Manthoppu branch.

Ex. No.	Date	Description
W10	23-07-96	Xerox copy of the service certificate issued by Kariapatti branch.
W11	23-09-99	Xerox copy of the service certificate issued by Aruppukottai branch.
W12	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions.
W13	Nil	Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W15	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W16	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W17	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W18	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W19	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W20	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W21	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W22	09-11-92	Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff.
W23	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W24	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W25	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W26	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

**For the Respondent/Management :**

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Madurai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 8 अगस्त, 2007

का. आ. 2494.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 85/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/33/1999-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 8th August, 2007

S. O. 2494.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 85/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 8-8-2007.

[No. L-12012/33/1999-IR (B-1)]

AJAY KUMAR, Desk Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
CHENNAI**

Wednesday, the 31st January, 2007

**PRESENT****K. Jayaraman, Presiding Officer**

**INDUSTRIAL DISPUTE NO. 85/2004****(Principal Labour Court CGID No. 259/99)**

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

**BETWEEN**

Sri R. Ganesan : I Party/Petitioner

**AND**

The Assistant General : II Party/Management  
Manager,  
State Bank of India,  
Zonal Office,  
Madurai.

**APPEARANCE**

For the Petitioner : Sri V. S. Ekambaram,  
Authorised Representative

For the Management : Mr. B. Rajendran,  
Advocate

**AWARD**

The Central Government, Ministry of Labour vide Order No. L-12012/33/99-IR(B-I) dated 10-5-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 259/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 85/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri R. Ganesan, wait list No. 310 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Mudhukulathur branch from 11-9-1982. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court.

The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Mudhukulathur branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 11-9-1982, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Aruppukottai branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank

has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 310 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees

who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 310, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of

vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 310 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

#### Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the

retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C' but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the

guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation

of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201-H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/

Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they

find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional

cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/

Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 *Union of India and Others Vs. K. V. Vijeesh* wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 *Syndicate Bank & Ors. Vs. Shankar Paul and Others* wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus, misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 *Shankarsan Dash Vs. Union of India* wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 *State of Haryana and Ors. Vs. Piara Singh and Others* wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference

to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 *Ashwani Kumar and Others Vs. State of Bihar and Others* wherein the Full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 *Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors.* wherein the Supreme

Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. .... it has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made

permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujapur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decision, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala

fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

#### Witnesses Examined :

For the Petitioner : WW1 Sri R. Ganesan

WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan

MW2 Sri M. Perumal

#### Documents Marked :

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.

Ex. No.	Date	Description
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messengers posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	05-01-95	Xerox copy of the service certificate issued by Mudugulathur branch.
W10	11-09-82	Xerox copy of the service certificate issued by Mudugulathur branch.
W11	13-01-94	Xerox copy of the service certificate issued by Mudugulathur branch.
W12	23-09-99	Xerox copy of the service certificate issued by Aruppukotai branch.
W13	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding appointment of temporary employees.
W14	Nil	Xerox copy of the reference book on staff matters Vol. III consolidated upto 31-12-95.
W15	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W16	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W17	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W18	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W19	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.

Ex. No.	Date	Description
W20	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W21	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W22	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W23	09-11-92	Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff.
W24	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W25	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W26	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W27	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

**For the Respondent/Management :**

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Madurai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 8 अगस्त, 2007

का. आ. 2495.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 77/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/475/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 8th August, 2007

S. O. 2495.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 77/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 8-8-2007.

[No. L-12012/475/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
CHENNAI**

Wednesday, the 31st January, 2007

**PRESENT**

K. Jayaraman, Presiding Officer

**INDUSTRIAL DISPUTE NO. 77/2004**

(Principal Labour Court CGID No. 184/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

**BETWEEN**

Sri P. Thalamuthu : I Party/Petitioner

**AND**

The Assistant General : II Party/Management  
Manager,  
State Bank of India, Z.O.  
Madurai

**APPEARANCE**

For the Petitioner : Sri V. S. Ekambaram,  
Authorised Representative

For the Management : Mr. D. Mukundan, Advocate

### AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/475/98-IR(B-I) dated 12-3-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 184/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 77/2004.

2. The Schedule mentioned in that order is as follows :—

“Whether the demand of the workman Shri P. Thalamuthu, wait list No. 471 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Z. O. Madurai branch from 18-6-1981. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Z. O. Madurai branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 18-6-1981, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Thallakulam

Madurai branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I. D. Act in lieu of provisions of

law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 471 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 471, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements

were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 471 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

**Point No. 1 :**

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees

at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and

9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not inconformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not

been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he was arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Exts. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Exts. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Exts. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the

Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I. D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I. Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/

Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings

reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein

the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons

removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 *Syndicate Bank & Ors. Vs. Shankar Paul and Others* wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 *Shankarsan Dash Vs. Union of India* wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 *State of Haryana and Ors. Vs. Piara Singh and Others* wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held

that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 *Ashwani Kumar and Others Vs. State of Bihar and Others* wherein the full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 *Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors.* wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. .... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujampur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right

upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market

economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

**Point No. 2 :**

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

**Witnesses Examined :**

For the Petitioner : WW1 Sri P. Thalamuthu  
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan  
MW2 Sri M. Perumal

**Documents Marked :**

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.

Ex. No.	Date	Description
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	03-11-81	Xerox copy of the service certificate issued by Regional Office Madurai Branch.
W10	05-01-95	Xerox copy of the service certificate issued by Tallakulam Madurai branch.
W11	21-01-98	Xerox copy of the service certificate issued by Tallakulam branch.
W12	22-04-82	Xerox copy of the letter from Regional Office to Petitioner.
W13	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding appointment of temporary employees.
W14	Nil	Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95.
W15	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W16	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W17	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W18	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W19	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W20	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W21	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W22	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W23	09-11-92	Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff.
W24	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W25	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants.

- W26 07-02-06 Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
- W27 31-12-85 Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

**For the Respondent/Management:**

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Madurai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 8 अगस्त, 2007

का. आ. 2496.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूच में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पचाट (संदर्भ संख्या 82/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/536/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 8th August, 2007

S.O. 2496.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref No. 82/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 8-8-2007.

[No. L-12012/536/1998-IR (B-I)]  
AJAY KUMAR, Desk Officer

**ANNEXURE**  
**BEFORE THE CENTRAL GOVERNMENT**  
**INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,**  
**CHENNAI**

Wednesday, the 31st January, 2007

**PRESENT**

K. Jayaraman, Presiding Officer

**INDUSTRIAL DISPUTE NO. 82/2004**

(Principal Labour Court CGID No. 231/99)

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

**BETWEEN**

Sri K. Lakshmanan

I Party/Petitioner

**AND**

The Assistant General

Manager,

State Bank of India,

Zonal Office,

Madurai.

**APPEARANCE**

For the Petitioner

Sri V. S. Elambaram,

Authorised Representative

For the Management

Mr. D. Mukundan, Advocate

**AWARD**

The Central Government, Ministry of Labour vide Order No. L-12012/536/98-IR (B-I) dated 19-3-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 231/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 82/2004.

2. The Schedule mentioned in that order is as follows:

"Whether the demand of the workman Shri K. Lakshmanan wait list No. 418 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment

as messenger after an interview and medical examination. He was appointed on temporary basis at Srivaigundam branch from 30-11-1979. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Srivaigundam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 30-11-79, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Tuticorin branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the

Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was waitlisted as candidate No. 418 in waitlist of Zonal Office, Mudarai. So far 219 wait listed temporary candidates, out of 492 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more

number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 418, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously

with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 418 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?"

(ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of, the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time

of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary

employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed

after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principle clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies', casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting

within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he was arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I. D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I. Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc." It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/

Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has

held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment

thereupon as temporary messenger is justified ? The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument

advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not ? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the

expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a backdoor; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned

counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors, wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment, therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while

laying down the law, has clearly held that “unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. .... it has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 Municipal Council, Sujapur Vs. Surinder Kumar, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement,

the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

#### Witnesses Examined :

For the Petitioner : WW1 Sri K. Lakshmanan

WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan

MW2 Sri M. Perumal

**Documents Marked :**

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	22-08-80	Xerox copy of the service certificate issued by Srivaigundam Branch.
W10	1992-97	Xerox copy of the service certificate issued by Tuticorin branch.
W11	Nil	Xerox copy of the administrative guidelines in reference books on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions.
W12	Nil	Xerox copy of the Reference book on Staff matters Vol. III consolidated upto 31-12-95.
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj
W15	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan
W16	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W17	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W18	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.

Ex. No.	Date	Description
W19	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W20	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W21	09-11-92	Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff.
W22	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W23	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W24	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W25	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

**For the Respondent/Management :**

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Madurai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 8 अगस्त, 2007

का. आ. 2497.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 84/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/30/1999-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 8th August, 2007

S. O. 2497.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 84/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 8-8-2007.

[No. L-12012/30/1999-IR (B-I)]  
AJAY KUMAR, Desk Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
CHENNAI**

Wednesday, the 31st January, 2007

**PRESENT****K. Jayaraman, Presiding Officer****INDUSTRIAL DISPUTE NO. 84/2004****(Principal Labour Court CGID No. 258/99)**

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

**BETWEEN**

Sri P. Karupiah : I Party/Petitioner

**AND**

The Assistant General : II Party/Management  
Manager,  
State Bank of India, Z.O.  
Madurai.

**APPEARANCE**

For the Petitioner : Sri V. S. Ekambaram,  
Authorised Representative

For the Management : Mr. B. Rajendran, Advocate

**AWARD**

The Central Government, Ministry of Labour vide Order No. L-12012/30/99-IR(B-I) dated 10-5-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 258/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 84/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri P. Karupiah, wait list No. 315 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Thiruchuli branch from 6-5-1983. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Thiruchuli branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 6-5-1983, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Thiruchuli branch, another advertisement by the Respondent/

Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with

ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 315 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 315, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the

country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 315 for restoring the wait list of

temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?"

- (ii) "To what relief the Petitioner is entitled ?"

#### Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 1(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for

appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Exts. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Exts. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald

statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended to behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's

work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he was arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial

Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I. D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I. Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 11 LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement

entered into by the Respondent/Bank and the Federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 ILLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K. C. P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that, it has been

arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only one duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held

that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in *Express Newspapers P. Ltd.* case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 *Union of India and Others Vs. K. V. Vijeesh* wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 *Syndicate Bank & Ors. Vs. Shankar Paul and Others* wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion

of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 *Shankarsan Dash Vs. Union of India* wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 *State of Haryana and Ors. Vs. Piara Singh and Others* wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of an without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned

directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual

wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. .... it has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujampur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

#### Witnesses Examined :

For the Petitioner : WW1 Sri P. Karupiah

WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan

MW2 Sri M. Perumal

#### Documents Marked :

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	12-08-88	Xerox copy of the service certificate issued by Tiruchuli branch.
W10	15-11-97	Xerox copy of the service certificate issued by Tiruchuli branch.

Ex. No.	Date	Description
W11	01-11-97	Xerox copy of the service certificate issued by Nalur branch.
W12	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions.
W13	Nil	Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W15	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W16	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W17	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W18	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W19	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W20	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005—wait list No. 395 of Madurai Circle.
W21	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W22	09-11-92	Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff.
W23	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W24	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W25	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W26	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

**For the Respondent/Management :**

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Madurai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 8 अगस्त, 2007

**का. आ. 2498.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 63/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/258/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 8th August, 2007

**S. O. 2498.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 63/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 8-8-2007.

[No. L-12012/258/1998-IR (B-1)]

AJAY KUMAR, Desk Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI**

Wednesday, the 31st January, 2007

**PRESENT****K. Jayaraman, Presiding Officer**

**INDUSTRIAL DISPUTE NO. 63/2004****(Principal Labour Court CGID No. 85/99)**

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

**BETWEEN**

Sri A. Sivaji : I Party/Petitioner

**AND**

The Assistant General : II Party/Management  
Manager,  
State Bank of India,  
Zonal Office,  
Madurai.

**APPEARANCE**

For the Petitioner : Sri V. S. Ekambaram,  
Authorised Representative

For the Management : M/s. P. Mukundan,  
Advocates

**AWARD**

The Central Government, Ministry of Labour vide Order No. L-12012/258/98-IR(B-1) dated 5-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 85/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 63/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri A. Sivaji, wait list No. 468 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Karaikudi branch from 14-6-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The

Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Karaikudi branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 14-6-1984, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Karaikudi branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank

has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was waitlisted as candidate No. 468 in waitlist of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees

who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 468, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of

vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 468 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

**Point No. 1 :**

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997

before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging

casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belong to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-

preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W.P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended to behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(o) of the I.D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H.D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the

Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I. D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I. Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in

age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the

settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/

Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 *Union of India and Others Vs. K. V. Vijeesh* wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 *Syndicate Bank & Ors. Vs. Shankar Paul and Others* wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 *Shankarsan Dash Vs. Union of India* wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 *State of Haryana and Ors. Vs. Piara Singh and Others* wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference

to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 *Ashwani Kumar and Others Vs. State of Bihar and Others* wherein the full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 *Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors.* wherein the Supreme Court has held that "they are temporary employees

working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. .... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if

the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujapur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other

inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the Petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

#### Witnesses Examined :

For the Petitioner : WW1 Sri. A. Sivaji  
WW2 Sri V. S. Ekambaram  
For the Respondent : MW1 Sri C. Mariappan  
MW2 Sri M. Perumal

#### Documents Marked :

Ex. No. Date Description

W1 01-08-88 Xerox copy of the paper publication in daily Thanthi based on Ex. M1.  
W2 20-04-88 Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.

Ex. No.	Date	Description
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	Nil	Xerox copy of the service particulars of Petitioner issued by Karaikudi branch.
W10	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment of subordinate cadre and service conditions.
W11	Nil	Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95.
W12	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W15	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W16	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W17	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W18	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.

Ex. No.	Date	Description
W19	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W20	09-11-92	Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff.
W21	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W22	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W23	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W24	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

**For the Respondent/Management :**

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Madurai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 8 अगस्त, 2007

**का. आ. 2499.**— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 78/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/478/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 8th August, 2007

**S. O. 2499.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 78/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 8-8-2007.

[No. L-12012/478/1998-IR (B-I)]  
AJAY KUMAR, Desk Officer**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
CHENNAI**

Wednesday, the 31st January, 2007

**PRESENT****K. Jayaraman, Presiding Officer****INDUSTRIAL DISPUTE NO. 78/2004****(Principal Labour Court CGID No. 189/99)**

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

**BETWEEN**

Sri S. Ramakrishnan : I Party/Petitioner

**AND**The Assistant General : II Party/Management  
Manager,  
State Bank of India,  
Zonal Office,  
Madurai**APPEARANCE**For the Petitioner : Sri V. S. Ekambaram,  
Authorised Representative

For the Management : Mr. D. Mukundan, Advocate

**AWARD**

The Central Government, Ministry of Labour vide Order No. L-12012/478/98-IR(B-I) dated 12-3-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 189/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 78/2004.

2. The Schedule mentioned in that order is as follows:—

"Whether the demand of the workman Shri S. Ramakrishnan wait list No. 326 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?"

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Rajapalayam branch from June, 1981. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Rajapalayam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From June 1981, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Rajapalayam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh

representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation

proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was waitlisted as candidate No. 326 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 326, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily

wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment/exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 326 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

#### Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for

interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I.D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched

workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W.P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances,

as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and

privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W.P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I. D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I. Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they

have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass

Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the

federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between

the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and

therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 *Shankarsan Dash Vs. Union of India* wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 *State of Haryana and Ors. Vs. Piara Singh and Others* wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of an without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 *Ashwani Kumar and Others Vs. State of Bihar and Others* wherein the full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an

irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 *Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors.* wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 *Secretary, State of Karnataka Vs. Uma Devi*, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is

not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.” Further, the Supreme Court while laying down the law, has clearly held that “unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. .... it has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules.” Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that “regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise.” Further, in CDJ 2006 SC 395 Municipal Council, Sujanpur Vs. Surinder Kumar, the Supreme Court has held that “it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a ‘State’ within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law.” Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that “only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service.” The Supreme Court also held that “the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decision, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the

wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

**Witnesses Examined :**

For the Petitioner : WW1 Sri S. Ramakrishnan

WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan

MW2 Sri M. Perumal

**Documents Marked :**

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	Nil	Xerox copy of the service certificate issued by Rajapalayam branch.
W10	25-07-97	Xerox copy of the service certificate issued by Rajapalayam branch.
W11	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions.
W12	Nil	Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95.
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.

Ex. No.	Date	Description
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W15	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W16	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W17	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W18	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W19	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W20	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W21	09-11-92	Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff.
W22	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W23	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W24	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W25	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

**For the Respondent/Management :**

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Madurai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 8 अगस्त, 2007

का. आ. 2500.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 76/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/473/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 8th August, 2007

S.O. 2500.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 76/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 8-8-2007.

[No. L-12012/473/1998-IR (B-I)]  
AJAY KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 31st January, 2007

#### PRESENT

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE NO. 76/2004

(Principal Labour Court CGID No. 183/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

#### BETWEEN

Sri L. Sethuramalingam : I Party/Petitioner

#### AND

The Assistant General : II Party/Management  
Manager,  
State Bank of India, Z.O.  
Madurai

#### APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,  
Authorised Representative

For the Management : M/s. K. S. Sundar, Advocates

#### AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/473/98-IR(B-I) dated 12-3-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 183/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 76/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri L. Sethuramalingam, wait list No. 458 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Srivaikundam branch from 15-7-1980. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Srivaikundam branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 15-7-1980, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also.

While working on temporary basis in Srivaikundam branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I. D. Act in lieu of provisions of

law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was waitlisted as candidate No. 458 in wait list of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 458, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements

were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

(i) "Whether the demand of the Petitioner in Wait List No. 458 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"

(ii) "To what relief the Petitioner is entitled?"

**Point No. 1 :**

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service

exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively.

But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their

appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he was arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001

and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I. D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I. Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business

exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering

Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal

cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and

discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow

irrespective of an without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. .... it has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujampur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the

subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore.”

16. Relying on all these decision, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar case, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim

regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

#### Witnesses Examined :

For the Petitioner : WWI Sri L. Sethu Ramalingam  
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan  
MW2 Sri M. Perumal

#### Documents Marked :

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messengers posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.

Ex. No.	Date	Description
W9	23-12-80	Xerox copy of the service particulars of Petitioner issued by Srivaikundam branch.
W10	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions.
W11	Nil	Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95.
W12	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W15	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W16	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W17	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W18	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W19	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W20	09-11-92	Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff.
W21	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W22	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W23	07-02-06	Xerox copy of the local Head Office Circular about conversion of part time employees and redesignate them as general attendants.
W24	31-12-85	Xerox copy of the local Head Office Circular about appointment of temporary employees in subordinate cadre.

**For the Respondent/Management :**

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Madurai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 8 अगस्त, 2007

**का. आ. 2501.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 61/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/271/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 8th August, 2007

**S. O. 2501.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 61/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 8-8-2007.

[No. L-12012/271/1998-IR (B-I)]  
AJAY KUMAR, Desk Officer**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
CHENNAI**

Wednesday, the 31st January, 2007

**PRESENT****K. Jayaraman, Presiding Officer**

**INDUSTRIAL DISPUTE NO. 61/2004****(Principal Labour Court CGID No. 83/99)**

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

**BETWEEN**

Sri K. Velayuthan : I Party/Petitioner

**AND**

The Assistant General Manager,  
State Bank of India, Z.O.  
Madurai. : II Party/Management

**APPEARANCE**

For the Petitioner : Sri V.S. Ekambaram,  
Authorised Representative

For the Management : Mr. D. Mukundan, Advocate

**AWARD**

The Central Government, Ministry of Labour vide Order No. L-12012/271/98-IR(B-I) dated 5-2-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 83/99 and issued notices to both parties. Both sides entered appearance and filed their Claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 61/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri K. Velayuthan, wait list No. 373 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Tiruchendur branch from October, 1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached

between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Tiruchendur branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From October, 1984, the Petitioner has been working as a temporary messenger and some times performing work in other branches also. While working on temporary basis in Tiruchendur branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G and 25H of the I.D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave,

medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was waitlisted as candidate No. 373 in waitlist of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service

in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 373, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank

deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 373 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1:

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the

retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the

guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of

circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended to behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/

Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modification of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I.D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I.Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they

find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I.D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional

cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/

Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 *Union of India and Others Vs. K. V. Vijeesh* wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 *Syndicate Bank & Ors. Vs. Shankar Paul and Others* wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 *Shankarsan Dash Vs. Union of India* wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 *State of Haryana and Ors. Vs. Piara Singh and Others* wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference

to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 *Ashwani Kumar and Others Vs. State of Bihar and Others* wherein the full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 *Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors.* wherein the Supreme Court has held that "they are temporary employees

working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. .... it has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if

the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujampur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decision, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or

other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled to ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

#### Witnesses Examined :

For the Petitioner : WW1 Sri K. Velayudham  
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan  
MW2 Sri M. Perumal

#### Documents Marked :

Ex. No. Date Description

W1 01-08-88 Xerox copy of the paper publication in daily Thanthi based on Ex. M1.  
W2 20-04-88 Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.

Ex. No.	Date	Description
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengersial work.
W9	Nil	Xerox copy of the service particulars of Petitioner issued by Tiruchendur branch.
W10	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions.
W11	Nil	Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95.
W12	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W15	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W16	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W17	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W18	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W19	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.

Ex. No.	Date	Description
W20	09-11-92	Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff.
W21	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W22	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India Staff Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W23	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W24	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

**For the Respondent/Management :**

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Madurai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 8 अगस्त, 2007

का. आ. 2502.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 83/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/29/1999-आई आर (बी-1)]  
अजय कुमार, डेस्क अधिकारी

New Delhi, the 8th August, 2007

S. O. 2502.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 83/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 8-8-2007.

[No. L-12012/29/1999-IR (B-I)]  
AJAY KUMAR, Desk Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
CHENNAI**

Wednesday, the 31st January, 2007

**PRESENT****K. Jayaraman, Presiding Officer****INDUSTRIAL DISPUTE NO. 83/2004****(Principal Labour Court CGID No. 257/99)**

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

**BETWEEN**

Sri K. Chandrasekaran : I Party/Petitioner

**AND**

The Assistant General : II Party/Management  
Manager,  
State Bank of India,  
Zonal Office,  
Madurai.

**APPEARANCE**

For the Petitioner : Sri V. S. Ekambaram,  
Authorised Representative

For the Management : Mr. B. Rajendran, Advocate

**AWARD**

The Central Government, Ministry of Labour vide Order No. L-12012/29/99-IR(B-I) dated 10-5-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 257/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 83/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri K. Chandrasekaran, wait list No. 391 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Kumaran branch from 3-5-1983. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Kumaram branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 3-5-1983, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Vinayaga Nagar branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh

representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation.

proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was waitlisted as candidate No. 391 in waitlist of Zonal Office, Madurai. So far 219 wait listed temporary candidates, out of 492 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 492 wait listed candidates, 219 temporary employees were appointed and since the Petitioner was wait listed at 391, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily

wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 391 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

**Point No. 1 :**

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for

interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched

workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances,

as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(o) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and

privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I. D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I. Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they

have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass

Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 ILLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K. C. P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the

federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference; subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between

the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.R. was thus misconceived and

therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 *Shankarsan Dash Vs. Union of India* wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 *State of Haryana and Ors. Vs. Piara Singh and Others* wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable." Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 *Ashwani Kumar and Others Vs. State of Bihar and Others* wherein the full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an

irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 *Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors.* wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 *Secretary, State of Karnataka Vs. Uma Devi*, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also

held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. .... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujampur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decision, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from

doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

**Witnesses Examined :**

For the Petitioner : WW1 Sri K. Chandrasekaran

WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan

MW2 Sri M. Perumal

**Documents Marked :**

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	29-12-83	Xerox copy of the letter from Employment Exchange.
W10	18-01-87	Xerox copy of the service certificate issued by Kumaram branch.
W11	19-11-91	Xerox copy of the service certificate issued by Kumaram branch.
W12	12-06-93	Xerox copy of the service certificate issued by Kumaram Branch.
W13	Nil	Xerox copy of the service certificate issued by Vinayaga Nagar branch.
W14	Nil	Xerox copy of the service certificate issued by Vinayaga Nagar branch.
W15	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions.
W16	Nil	Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95.
W17	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.

Ex. No.	Date	Description
W18	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W19	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W20	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W21	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W22	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W23	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W24	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W25	09-11-92	Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff.
W26	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W27	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W28	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W29	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

**For the Respondent/Management :**

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Madurai Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 9 अगस्त, 2007

**का. आ. 2503.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एन एफ रेलवे, लुम्डींग डिवीजन के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, गुवाहाटी के पंचाट (संदर्भ संख्या 10/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-8-2007 को प्राप्त हुआ था।

[सं. एल-41012/26/2005-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 9th August, 2007

**S.O. 2503.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2005) of the Central Government Industrial Tribunal, Guwahati as shown in the Annexure, in the Industrial Dispute between the management of N.F. Railway and their workmen, which was received by the Central Government on 9-8-2007.

[No. L-41012/26/2005-IR (B-I)]  
AJAY KUMAR, Desk Officer

#### ANNEXURE

#### IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GUWAHATI, ASSAM

#### PRESENT

Shri H. A. Hazarika, Presiding Officer

CGIT-cum-Labour Court, Guwahati

Ref. Case No. 10 of 2005

In the matter of an Industrial Dispute between :

The Management of N.F. Railway, Lumding Division,  
Nagaon

*Vs.*

Their Workman Sri Tapan Kr. Dey, Kolkata

#### APPEARANCE

For the Workman : Workman appeared on one date  
only (Exparte and no Advocate  
appeared).

For the Management : Mr. K. C. Sarma, Rly. Advocate

Date of Award : 19-07-07

#### AWARD

1. The Government of India, Ministry of labour, New Delhi, vide its order No. L-41012/26/2005-IR(B-I) dt. 27-10-2005 referred this Industrial Dispute arose between the employers in relation to the Management of the General Manager (P), N.F. Railway, Lumding and their Workman, Sri Tapan Kr. Dey to adjudicate and to pass an award on the strength of

powers conferred by Clause (d) of Sub-Section (1) and Sub-Section (2A) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) on the basis of the following Schedule :

#### SCHEDULE

"Whether the action of the management of N.F. Railway, Maligaon and Lumding division not to regularize Sh. Tapan Kr. Dey (Ex. Casual Labour) N.F. Railway, Lumding Division is fair, just and legal ? If not, to what relief the workman concerned is entitled ?"

2. On being appeared by both the parties the proceeding is proceeded here for disposal being numbered 10/2005 as per Procedure.

3. The case of the workman Sri Tapan Kr. Dey in brief is that the workman was working as Casual Waterman in the N.F. Railway under Divisional Accounts Officer, Lumding, Dist. Nagaon, Assam. That as per FA and CAO's Office order No. PNO/AD/CL-IV/RECTT/81 dated 31-8-97 the service of Sri Ganesh Bahadur, Sri Hari Prasad Gour, Sri Bijoy Seal and Sri Ganesh Bahadur Damai were regularized by FA & CAO, Maligaon N.F. Railway. That he worked along with these four persons in same category and same period and that the management done injustice depriving him from regularization.

4. The case of the Management in brief that the workman Sri Tapan Kr. Dey was appointed as Hot Season Water-man with effect from 29-5-85 in terms of FA & CAO's Memorandum No. 184 dated 6-5-85 and subsequently Sri Dey was appointed in different spells in terms of Office orders. Sri Tapan Kr. Dey was given the benefits of temporary status w.e.f. 1-6-86 with remarks, "this will not confer him any right for regular absorption in service" as per the O.O. No. LG/757 dated 27-6-86. That he was engaged as Hot Season Water-man with effect from 2-6-97 to 1-9-97 for three months vide FA & CAO/ADMLG's Memorandum No. 242 dated 12-5-97. On expiry of the term he was discharged on 13-9-07 vide Office Order No. LG/82 dated 29-8-97. That the three casual Labours namely (1) Sri Ganesh Bahadur (2) Sri Hari Prasad Gour and (3) Sri Bijoy Seal were on roll against regular vacancy and accordingly they were on Roll on 30-4-96. Sri Tapan Kr. Dey was engaged on seasonal job w.e.f. 23-5-96 to 22-8-96 as per Office Order No. LG/44 dated 23/29-5-96. Accordingly his name was not on roll as on 30-4-96. All the Casual labourers who are on roll as on 30-4-96 must be absorbed against the vacancies within the financial year 1997-98. As per Railway Board's Letter No. E(NG)11/96/CI/51 dated 11-12-96, (1) Sri Ganesh Bahadur (2) Sri Hari Prasad Gour and (3) Sri Bijoy Seal were absorbed against the vacancy as Sri Tapan Kr. Dey did not come under the purview of the instructions contained in R.B.'s letter as such, was not regularized.

5. It is pertinent to note here that Sri Tapan Kr. Dey having received the notice appeared before this Tribunal and submitted a statement with some Photostat copies of documents. He did not file a regular W.S. as per procedure and as ordered. The management submitted their W.S. as per procedure. The workman Sri Tapan Kr. Dey submitted a

prayer on 12-5-06 that he could not be represented by an Advocate due to some unavoidable circumstances and prayed for time which is allowed but after that the workman did not appear and contest the case. After sufficient time the evidence of the Management recorded exparte. Perused all the documents exhibited by the management witness. It is important to note here that this Reference proceeding is initiated at the instance of the Workman Sri Tapan Kr. Dey and as such the burden lies on the workman to prove that the Management done injustice to him by regularizing his colleagues who are junior to him. But he did not care to discharge his burden rather he neglected to proceed with the matter as per procedure.

6. The Management witness Sri Ashim Kumar Barman, Senior Section Officer, N.F. Railway Lumding deposed that Sri Tapan Kumar Dey was temporarily engaged by the N.F. Railway, Lumding for three months as Casual Labour as Hot Season Water Man. He was appointed for three months in a year in 1985. Then he was engaged for the similar period in 1997 and he was never engaged for more than three months in a year. He was paid on the basis of no work no pay. The witness denied that five casual labours were superseded the workman and five casual labours who were given status of permanent Group D employees were senior to the workman. The appeal preferred by the workman is rejected by the authority concerned. After gap of 8 years since 1997 on a delayed stage the workman raised this reference matter. The witness is not cross-examined and matter proceeded exparte.

7. On careful scrutiny of the record I find the workman was appointed for spell of three months in a year as a Hot Season Water man by the management. On perusal of the evidence I find that the workman was junior to the workman who were regularized and not superseded as claimed by the workman. From the facts and circumstances of the matter I find (1) Sri Ganesh Bahadur, (2) Sri Hariprasad Gour, (3) Sri Bijoy Seal and (4) Sri Ganesh Bhadur Damai are not junior to the concerned workman Sri Tapan Kr. Dey and also what I find the action of the management, N.F. Railway, Lumding Division, is justified and the Management has not done any injustice to the workman.

8. Under the above facts and circumstances I find the workman is not entitled to get regularization as he claimed. Accordingly his claim is rejected.

9. Prepare the award and send it to the authority concerned confidentially and immediately as per procedure.

H.A. HAZARIKA, Presiding Officer

नई दिल्ली, 9 अगस्त, 2007

का. आ. 2504. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (संदर्भ संख्या 74/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/8/2001-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 9th August, 2007

S.O. 2504.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 74/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the Management of UCO Bank and their workmen, which was received by the Central Government on 7-8-2007.

[No. L-12012/8/2001-IR (B-II)]  
RAJINDER KUMAR, Desk Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

#### PRESENT

Shrikant Shukla, Presiding Officer

I.D. No 74 of 2001

Ref. No. L-12012/8/2001/IR (B-II) Dt. 27-4-01

#### BETWEEN

Shri Naresh Kumar,  
B/187-A, Mitra Nagar,  
Aligarh (U.P.)

#### AND

UCO Bank, Zonal Manager,  
UCO Bank, Zonal Office,  
23 Vidhan Sabha Marg,  
Lucknow (U.P.) 226001

#### AWARD

1. The Government of India, Ministry of labour, New Delhi, referred the following dispute vide No. L-12012/8/2001/IR (B-II) dt. 27-4-01 for adjudication to the Presiding Officer, CGIT-cum-Labour Court, Lucknow:

"Whether the compulsory Retirement of Sri Naresh Kumar by the Regional Manager, UCO Bank is legal and justified? If not what relief the concerned workman is entitled to?"

It is not disputed that charge sheet dt. 18-7-97 bearing No. RM : SF : 97 : 30 was served upon the workman Sri Naresh Kumar Varshney who shall hereinafter called as workman by the UCO Bank which shall hereinafter called as bank. The allegation in charge is as under :

"That on 5-2-97, Mr. Yatish Kumar Sharma S/o Sri CP Sharma R/o 3/27, Lekhranj Nagar, Aligarh came to the Extension counter for purchase of a Demand Draft for Rs. 10.00 in favour of Finance Officer, Dr. BR Ambedkar University, Agra for enrolment in MBA. You, while posted at our Nagar Nigam Extension Counter, Aligarh on the above date, delayed to release the DD Voucher from cash department. On

your doing delay, Mr. Yatish Kumar Sharma requested you send the voucher to the concerned Clerk to expedite the process of issuance of Demand Draft, since his father was admitted in a hospital. On this request of Mr. Yatish Kumar Sharma, you not only became annoyed but also abused him and pushed him too. It is further reported that you have misbehaved with Mr. Yatish Kumar Sharma several times in past also.

Apart from above, it has also been reported against you that you are in the habit of delaying the release of voucher from cash department as a result of which issuance service is badly affected and many a times you have been misbehaving with the customers of the Bank at the Extension counter which act of yours is damaging the image of the bank.

The above allegations constitute misconduct on your part as under :

1. Your above act is prejudicial to the interest of the bank which as per clause 19.5(j) of the Ist Bipartite Settlement dt. 19-10-66 as amended upto date is Gross Misconduct.
2. You have failed to show proper considerations and courtesy towards customers of the bank and have shown unsatisfactory behavior while on duty, which is, as per clause 19.7(j) of Ist Bipartite Settlement dt. 19-10-66 as amended upto date, is Minor Misconduct.
3. Misbehavior towards customers of the bank arising out of bank's business which, as per clause 19.5(j) of Ist Bipartite Settlement dt. 19-9-66 as amended upto date, is gross misconduct.

You are hereby charges with each of the above mentioned charges.

For the above incidence dt. 5-2-97 at our Nagar Nigam Extension Counter, Aligarh and your repeated misbehavior with the customers of the bank, you have been placed under suspension by the bank vide suspension order dt. 24-4-97.

You are requested to submit your explanation/written statement of defence. If any, within a period of seven days of receipt of this letter, failing which further action as deemed appropriate as per provisions of Bipartite Settlement dt. 19-10-66 as amended upto date, will be taken against you without further reference to you in this regard.

Sd/-

Disciplinary Authority,  
(Regional Manager)

It is alleged by the workman is that due to mala fide intention of management to victimise the workman, the bank management conducted the same departmental proceedings against the workman. It is also alleged that the worker was not allowed opportunity to produce evidence in the defence and the enquiry was conducted in

violation of principle of natural justice and the same was perverse. The Disciplinary Authority vide its orders No. UPZO/PAD/RM(8) LKO/1999-2000 dated August 26, 1999 imposed the following punishment in respect of charges :

Charge No. 1 : Proved—Dismissal without Notice from the Bank.

Charge No. 2 : Proved—Dismissal without Notice from the Bank.

Charge No. 3 : Proved—Dismissal without Notice from the Bank.

Workman preferred an appeal before the Appellate Authority of the bank who vide order dt. 13-3-2000 modified the punishment order as followed :

Charge No	Status	Punishment Awarded
1.	Proved	Compulsorily retired from Bank's service with superannuation benefits as would be due otherwise at that stage and without disqualification from future employment.
2.	Proved	—do—
3.	Proved	—do—

The worker has alleged that according to Bipartite Settlement, dt. 19-10-66 (amended) the misconduct divided into two parts :

1. Major Misconduct
2. Minor Misconduct

Separate punishment are prescribed for major and minor punishment. It is further alleged that Appellate Authority itself has admitted that charge No. 2 is minor misconduct and according to the provision of Bipartite Settlement no workman can be dismissed from service. Both disciplinary authority and Appellate Authority have inflicted the punishment of major misconduct. It is also alleged that there is no provision of compulsory retirement. Worker has therefore requested for setting aside the order and reinstatement with all consequential benefits.

Opposite party has filed written statement wherein it has been denied that the departmental enquiry was conducted in violation of principle of natural justice. Bank has denied the allegations of the workman that the management involved in mala fide intention or victimisation of the workman. It is also submitted that the workman was allowed opportunity to defend himself. Regarding the punishment order it is submitted by the bank that Appellate Authority has passed that orders after perusing the entire evidence on record. Report of the enquiry officer and the brief submitted by the workman thus the Appellate Authority has taken its decision after application of mind. However, Appellate Authority has took lenient view looking to the age of the workman and instead of awarding the workman with punishment of removal from service ordered for compulsory retirement. It is also submitted that Appellate Authority gave due opportunity to the workman

and after analysing the entire factors took appropriate decision. It is also submitted that in every bank, customer is back bone of the bank and in any short fall of service are misbehaviour with the customer is serious misconduct which can not be excused. The bank has also submitted that the worker made mercy petition to the Chairman and the Board of Directors which too was rejected on 17-2-01 in which it has been hold that worker has been properly punished.

Parties have filed documentary evidence and worker has examined himself while the opposite party has examined Sri V. N. Nigam.

On 19-3-02 the then Presiding Officer framed the following preliminary issues :

1. Whether the domestic enquiry was fair and proper ? and
2. Whether the findings of the enquiry officer suffers with vice of perversity ?

By the order dt. 5-12-06 both the above issues were decided against the worker and it was held that domestic enquiry was conducted by the enquiry officer, is in fair and proper manner and there is no perversity in findings of the enquiry.

Thereafter workman examined himself on 10-5-07. Opposite party has not examined any evidence.

In the context of the present case the order passed by the Disciplinary Authority and Appellate Authority are relevant and therefore are reproduced below :

#### Order of Disciplinary Authority

"A charge sheet dt. 28-7-97 was issued to you and it was alleged against you that while working at UCO Bank Nagar Nigam Ext. Counter, Aligarh, on 5-2-97. One Mr. Yatish Kumar Sharma S/o Sri CP Sharma, R/o 3/27, Lekhraj Nagar, Aligarh came to the extension counter for purchase of a demand draft for Rs. 10 in favour of Finance Officer, Dr. B.R. Ambedkar University, Agra for enrollment in M.B.A. You delayed to release the D.D. voucher from cash department. On your doing delay Mr. Yatish Kumar Sharma requested you to send the voucher to the concerned clerk, to expedite the process of issuance of demand draft. Since the father of Mr. sharma was admitted in a hospital, on this request of Mr. Sharma you not only became annoyed, but also abused him and pushed him too. In past also, you had misbehaved with Mr. Sharma, as reported. It is also alleged against you that you were in the habit of delaying in releasing the vouchers from cash department, as a result of which customer service was badly affected and many a time you had been misbehaving with the customers of the bank at extension counter which act of your was damaging the image of the bank. The said allegation constitutes against you with the following misconducts :

1. That your act was prejudicial to the interest of bank as per clause 19.5(j) gross misconduct, under the provision of 1st Bipartite Settlement as amended.

2. That you failed to show proper consideration and courtesy towards customers of the bank, and misbehaved with them while on duty which is a minor misconduct under clause 19.7(j) of 1st Bipartite Settlement, as amended.
3. That your misbehaviour towards customers of the bank arising out of Bank's business was an act of gross misconduct as per clause 19.5(q) of 1st Bipartite Settlement as amended.

On receipt of your reply against the referred charge sheet, which was given by you vide your letters dt. 6-8-97 and which was found unsatisfactory. A notification dated 2-9-97 was issued by Regional Manager, Disciplinary Authority, UCO Bank, Lucknow to conduct an enquiry into the matter. The enquiry officer Mr. RS Bansal was appointed to conduct the enquiry but due to retirement of Mr. Bansal, Mr. VN Nigam was appointed as enquiry officer vide another notification dt. 31-1-98.

The presenting officer on behalf of the bank, produced the documentary evidence in support of the charges and also substantiated the same by oral evidence of the management witnesses.

The testimony of management witness establishes the facts as under :

The letter of Mr. Yatish Kumar (ME-2) confirm the above facts in toto Mr. Yatish Kumar (MW-2) has confirmed the incident of 5-2-97 as stated in the allegation during his deposition given/recorded on page No. 44 and 46 of proceeding MW-2 further deposed during the cross examination that you had abused/misbehaved and pushed him on 5-2-97 and you had misbehaved with his father and delayed the work several times in the past also.

Mr. S. S. Joshi who was the Incharge of Nagar Nigam Extension Counter, Aligarh, and was the eye witness of the incident, MW-3 has categorically confirmed the fact of incidents dt. 5-2-97 during his deposition in examination in chief. In the enquiry proceedings recorded on page No. 74 and 83 that you had abused and pushed repeatedly to Sri Yatish Kumar then (MW-3) and Sri DP Singh (another staff of extension counter) separated you from Sri Yatish Kumar. MW-3 has again confirmed during the cross-examination recorded on page No. 83 that you had abused Mr. Yatish Kumar on 5-2-97 MW-3 had clearly deposed during cross examination in the enquiry proceedings recorded on page No. 78 that the all vouchers of receipt were released by you only after 2.00 PM, in normal working days and only after 12.00 PM on Saturday. For this reason, the customer service was badly affected.

From ME-5 it is clearly established that you had refused to make the payment of cheques and withdrawals, which were duly passed by the competent authority in spite of instructions given by the Sr. Manager (D) verbally as well as in writing.

The deposition recorded on page No. 72 of MW-3 confirms that you were in the habit of delaying the release of receipt voucher from the cash department. Resultantly customer service was badly affected at the extension counter.

Sri N. Singh (MW-1) has confirmed ME-4 during his deposition. He (MW-1) further deposed during examination in chief recorded at page No. 35 and 36 that you had misbehaved, abused him and you (Mr. Varshney) had misbehaved in the past also. Further during the cross examination recorded on page No. 38 MW-1 has clearly deposed that you had misbehaved with him and this complaint (ME-4) has been lodged by him.

From the enquiry proceedings and ME-6 which is your reply in respect of chargesheet dt. 28-7-97, your behaviour is very much irresponsible, uncivilised, indecent and resentful.

In view of what has been stated above, the allegations/charges against you have been well established.

During the course of examination/cross examination you could not dispute the charges levelled against you. Moreover, you did not produce any documentary/oral evidence in your defence, though sufficient opportunity was given to you. You in your written brief dt. 11-4-99 instead of submitting your contentions in respect of the charges, levelled against you, for your defence, You had sidetracked and submitted your arguments not connected with the charge. Hence the contention submitted by you, not valid and could not be taken into cognizance. Since, you did not submit any documentary/oral evidence in your defence, deposition of management witness/documentary evidences produced by the Presenting Officer clearly proved the charges levelled against you. The management witness vide their MW-1, MW-2, MW-3 categorically confirmed the fact of the incidence dt. 5-2-97 during the enquiry proceedings the management witnesses, have confirmed that you abused and pushed repeatedly to Sri Yatish Kumar Sharma a customer of the Bank/branch. It has also been deposed by the management witnesses, recorded in the enquiry register that the vouchers of receipts were released by you after 2.00 P.M. another working days and after 12.00 P.M. on Saturday due to which the customer service was badly affected.

Sufficient opportunity was given to you for making your Defence, but you could not produce documentary/oral evidence in your defence.

In view of the above mentioned facts, the charges levelled against you vide chargesheet dt. 28-7-99 were proved, in the enquiry which are very grave in nature. The Bank is a public institution and the customer of the Bank are its backbone. If the customers of the bank are misbehaved/pushed outside the bank premises or otherwise it will be very difficult for the bank to survive.

Therefore, the following punishments against you were proposed vide our notice dt. 21 July 1999.

- Charge No. 1 : proved — Dismissal from bank's service without notice.
- Charge No. 2 : proved — Dismissal from bank's service without notice.
- Charge No. 3 : proved — Dismissal from bank's service without notice.

The above punishment would run concurrently.

The personal hearing on the above referred proposed punishment was fixed on 12-8-99 at 11.00 AM at zonal office. Mr. Varshney was present for personal hearing on 12-8-99 at Zonal Office before the Disciplinary authority. During the personal hearing Mr. Varsnney has submitted a written statement containing seven pages and requested that the submitted statement must be considered as the personal hearing.

The undersigned has gone through the contents of enquiry proceedings and come to the conclusion that the right of being heard has fully been afforded to Mr. Varshney. Apart he has given full opportunity to place his evidence and counter the evidence of the management. The enquiry Officer on the basis of evidences produced during the enquiry has proved the charges leveled against you. I have carefully gone through the entire records of enquiry and examined the same with independent mind and come to the conclusion that the charges levelled against you are found to be correct. Hence I concur with the findings of enquiry officer and accordingly, I impose the following penalties on you with free and independent mind and in exercise of the powers conferred upon as Disciplinary Authority by the bank :

- Charge No. 1 : proved — Dismissal without notice from the bank.
- Charge No. 2 : proved — Dismissal without notice from the bank.
- Charge No. 3 : proved — Dismissal without notice from the bank.

All the penalties will run concurrently and will have immediate effect.

Sd/-

Regional Manager (Branches)  
Disciplinary Authority"

#### Order of Appellate Authority

"Mr. Naresh Kumar, Head Cashier, Nagar Nigam Extension counter under control of Aligarh branch (since dismissed from bank's service) was issued a chargesheet on 28-7-97 alleging against him :

That on 5-2-97, one customer. Mr. Yatish Kumar sharma S/o Sri CP Sharma, R/o 3/27, Lekhraj Nagar, Aligarh came to the extension counter for purchase of a demand draft for Rs. 10.00 in favour of Finance Officer, Dr. B.R. Ambedkar University, Agra for enrolment in MBA. Mr. Naresh Kumar posted at the said counter as Head cashier on the said date delayed the release of D/D voucher from cash department. Mr. Sharma observing the delay, approached Mr. Varshney the then Head Cashier and requested him to send the voucher of D/D to the concerned clerk for expediting making of D/D as his father was admitted in a hospital. Mr. Vershney misbehaved with Mr. Sharma, abused and pushed him. Thereafter Mr. Sharma reported the matter against him to the incharge of the said counter stating that Mr. Varshney is in the habit of delaying the

vouchers and misbehaving with the customers and thus damaging the image of the bank. Pursuantly, Mr. Naresh Kumar Varshney was chargesheeted for :

- i. Committing acts of gross misconducts prejudicial to the interest of the bank in terms of clause 19.5(j) of 1st Bipartite settlement dt. 19-10-66.
- ii. Failing to show proper consideration and courtesy towards customers of the bank and showing unsatisfactory behaviour while on duty—a minor misconduct under clause 19.7(j) of 1st Bipartite settlement dt. 19-10-66.
- iii. Misbehaviour towards customers of the bank arising out of which bank's business, a gross misconduct under clause 19.5(q) added the 1st Bipartite settlement dt. 19-10-66 in terms of Memorandum of settlement dt. 14-2-95.

Mr. Naresh Kumar Varshney submitted his reply to the aforesaid allegations/charges levelled against him vide letter dt. 6-8-97 which was examined by the Disciplinary Authority and found unsatisfactory. Pursuantly, domestic enquiry was instituted vide Notification dt. 2-9-97 issued by the Disciplinary Authority who appointed Sri RS Bansal the then Dy. Chief Officer, Zonal Office, Lucknow as enquiring officer and Mr. J.N. Khare, the then Asstt. Chief Officer, Zonal Office.

Due to administrative exigencies a further notification was issued on 31-1-98 appointed Mr. VN Nigam as enquiry officer and Mr. KN Srivastava as Presenting Officer. In partial modification, another notification was issued on 20-10-98 by the then Disciplinary Authority appointing Mr. Anil Kumar, Asstt. Chief Officer, Zonal Office, U.P., Lucknow in place of Mr. KN Srivastava as Presenting Officer. The enquiry officer, after conducting the enquiry proceeding as per rules of natural justice, and after carefully scrutinising the record of the enquiry found all the charges levelled against Mr. Naresh Kumar Varshney proved and, accordingly, submitted his report dt. 1-5-99 to the Disciplinary Authority. The Disciplinary Authority, after his independent analysis of the entire record of the enquiry and written briefs, sent a letter dt. 21-7-99 to Mr. Varshney proposing the punishment of dismissals from bank's service. A photo copy of the enquiry report was also sent to Mr. Naresh Kumar Varshney along with order of proposed punishment dated 21-7-99.

The C.S.E. Mr. Naresh Kumar Varshney was given a personal hearing on 12-8-99 by the Disciplinary Authority in his chamber at Zonal Office, Lucknow. Mr. Varshney attended the hearing on the said date and submitted written statement before the Disciplinary authority but did not depose any thing before the Disciplinary Authority. The Disciplinary Authority, at the conclusion of personal hearing on 12-8-99 has recorded that Mr. Varsnney did not state any cogent reasons as to the nature of proposed punishment and pursuantly confirmed the proposed punishment of dismissal from bank's service after due care and judicious consideration in respect of all the charges found proved.

In his written statement, given to the Disciplinary Authority at the time of personal hearing, Mr. Naresh Kumar Varshney did not adduce any reasons to why the proposed punishment should not be awarded, instead irrelevant contentions were raised having no connection with the facts of the quantum of punishment and just made allegations against the higher authorities without any base or evidence. He has not come out anywhere that punishment proposed is not commensurate with the gravity of the charges. He, at this stage, has tried to put forth argument, against the documentary evidence produced during the enquiry which he did not controvert during the enquiry proceedings. The Disciplinary Authority, After analysing all the pros and cons, stated in his Final Order dt. 26-8-99 :

"That the Bank is a public institution and the customers of the bank are the backbone. If the customers of the bank are misbehaved/pushed outside the bank premises or otherwise, it will be very difficult for the bank to survive."

The Disciplinary Authority has found, after carefully going through the entire records of the enquiry, with an independent mind, that all the charges levelled against Mr. Varshney are conclusively proved. The Disciplinary Authority vide his Final Orders dt. 26-8-99 dismissed Mr. Varshney from the services of the bank for the charges proved.

Mr. Naresh Kumar Varshney, the appellant in the instant case, has assailed the final order dt. 26-8-99 and submitting his appeal dt. 5-10-99. The undersigned gave him personal hearing on 2-11-99 but due to attending of an urgent meeting at Head Office, Calcutta on 1-11-99 and 2-11-99, fixed 17-11-99 to hear the appellant's views. Mr. Naresh Kumar Varshney was present in the hearing on the said date before the undersigned and stated as under :

1. Late receipt of complaint from the customer in respect of the incidence dt. 5-2-97.
2. The complaint dt. 15-2-97 regarding incidence dt. 5-2-97 was received by the bank on 31-3-97 i.e. after a period of 44 days while the normal transit time is one to five days only.
3. No mention of the incidence dt. 5-2-97 in the records of extension counter/Aligarh branch and the same was not reported to higher authorities while other incidences dt. 8-9-98 and 11-11-99 have been reported to the higher authorities.
4. Neither any explanation was sought from him nor any show cause notice was given to him regarding incidence dated 5-2-97.
5. It is also not clear as to what abuses were hurled by him to the customer of the Extension counter. The same are neither mentioned in the chargesheet dt. 28-7-99 nor brought out in the enquiry proceedings. During the cross examination, on page no. 52 to 56 of enquiry

proceedings MW-2 the complainant of the incidence has deposed that he did not remember the abuses and thus avoided to disclose the real facts.

6. The complaint made by the customer—the original copy was not shown to him during the enquiry proceedings.
7. His witnesses were not allowed by the enquiry officer. He also submitted a letter dt. 17-11-99 during the personal hearing and concluded by saying that the entire enquiry proceedings deserved to be quashed and the punishment awarded by the Disciplinary Authority should be set aside and he should be reinstated in bank's service with all benefits.

The contentions expressed in point No. 1 to 7 above are discussed below :

1. The contention of para 1 above regarding late receipt of complaint I find that it has no relevance. The complainant Mr. Yatish Kumar MW-2 has stated on page 46 of the enquiry register that his father an ex-employee of the bank was hospitalised at that time. The complaint made by Mr. Yatish Kumar Sharma on 15-2-97 regarding misbehaviour of Mr. Varshney on 5-2-97 does not water down/lessen the gravity of misconduct committed by Mr. Varshney.
2. The contentions as regard to late submission of the complaint dt. 15-2-97 by the complainant. I find that nowhere during the enquiry, the Appellant has raised any such question from the complainant who was cross-examined by him whereas during cross examination, the complainant Mr. Yatish Kumar, MW-2 has confirmed the complaint dt. 15-2-97 as written by him due to being busy in examination, he could submit the complaint belatedly. This does not exculpate Mr. Varshney from the acts of misconduct committed by him.
3. The contention as expressed in point No. 3 has no relevance because the complaint dt. 15-2-97 is well in record of the bank and admitted in the enquiry as management exhibit marked ME-2 and ME-4. The contention of the appellant is totally baseless.
4. The contention in point No. 3 is not relevant as he was charge-sheeted for the misconduct committed by him on 5-2-97 vide charge sheet dt. 28-7-97 and he had submitted his reply thereto vide his letter dt. 6-8-97.
5. The contention as expressed in point No. 5 is preposterous as the complainant Mr. Yatish Kumar MW-2 during cross examination has deposed on page No. 56 that Mr. Varshney abused and pushed him in presence of other officers of extension counter namely Mr. Johri

and Mr. DP Singh. The CSE did not raise any question from MW-2 as to what abuses were hurled by him. Contrary to it, Mr. Varshney simply asked "who abused" and MW-2 deposed "Mr. Varshney". The CSE then asked from MW-2 "how many people helped you" the MW-2 deposed "two—Sri DP Singh and Sri Johri", thus the contention expressed in point No. 5 is misconceived and not acceptable to me.

6. The contention in point No. 6 is quite false, baseless and illogical because the complaints made against him have been produced during the enquiry, admitted as ME-1 and ME-4—copies of the same were given to him and Mr. Varshney had cross examined the witnesses but could not succeed to demolish the deposition of MW-1 and MW-2.
7. The contention in point No. 7 that his witnesses were not allowed by the enquiry officer is totally baseless and unfounded. I find that Mr. Varshney himself did not produce his witness. The charge-sheeted employee/defence should produce their own witnesses and bank is not required to produce the witnesses on their behalf.

The statement dt. 17-11-99 recorded during the personal hearing has signed by Mr. NK Varshney. The contentions made by him are quite illogical and false.

I have very closely gone through the entire proceedings/record of the enquiry and find that the charge sheet employee has been given full and fair opportunity to defend his case but could not demolish the management witness/documents rather he has side-tracked and raised irrelevant objections to delay the enquiry proceedings. MW-1, Mr. Ninnani Singh, a Guard in the Treasury of Aligarh Nagar Nigam has deposed on pages 35 and 36 of the enquiry register that Mr. Varshney abused and pushed him the branch premises of extension counter of Nagar Nigam. It has also been recorded in the enquiry register on page No. 35/36 :

"भोसड़ी के तुममें हिम्मत है तो यह रसीद की किताब मेज पर रखी हुई है, मेज से उठा ले।"

The Chowkidar replied why should he taken up the receipt book.

I also find that ME-4 which is a complaint of the deponent, MW-1 also substantiates the charges of indecent behaviour of Mr. Varshney. The CSE, during the cross examination of MW-1 that MW-2, Mr. Yatish Kumar on page No. 44-45 and 46 has deposed that Mr. Varshney caught and pushed him and hurled filthy abuses. This fact is also substantiated by ME-2 which is a complaint made by Mr. Yatish Kumar. The CSE during cross examination of MW-2 could not shake the deposition made by MW-2 (Refer page 47 to 56 of the enquiry register).

I also find that Mr. Varshney is in the habit of side-tracking the matter not connected with the charge sheet

and has been making wild and unfounded allegations against the higher authorities in his various letters and during the enquiry also this fact has been recorded in the enquiry proceedings on page No. 93 and 97 by the enquiry officer. Nothing new has been submitted by Mr. Varshney during the hearing on 17-11-99.

After a careful examination of all the relevant papers, record of the enquiry and contentions expressed by Mr. Varshney in his appeal and in the personal hearing, I come to the conclusion that the charges levelled against the appellant are quite grave and the evidences put forth during the enquiry proceedings leads me to take an independent opinion that the charges levelled against Mr. Varshney are conclusively proved. The bank is financial institution and the customers are its backbone. The rude and indecent behaviour with the customers/public in the branch premises leads to create an impression in the minds of public that in the indecent environment their interest are not safe. It must be noted that we are for the public interest and if that interest is kept unsafe in the eyes of public at large, we would rather lose the right to survive. Therefore, looking to the gravity of the misconduct, such incidences of misbehaviour with the customers must be checked strongly and require deterrent punishment which may give a signal to the disciplined work force to behave properly with the customers of the bank. However, keeping in view the young of the Appellant, I am inclined to take a lenient view. Accordingly, in my capacity as Appellate Authority, duly appointed by the Chairman and Managing Director the Chief Executive Officer of the bank, I modify the order dt. 26-8-99 passed by the Disciplinary Authority and award the following punishment upon Sri Naresh Kumar Varshney, the CSE and the appellant, PFM No. 22942, Ex-Head Cashier, Nagar Nigam Extension Counter, under Aligarh branch :

Charge No.	Status	Punishment Awarded
1.	Proved	Compulsorily retired from Bank's service with superannuation benefits as would be due otherwise at that stage and without disqualification from future employment.
2.	Proved	—do—
3.	Proved	—do—

The above punishment would run concurrently.

Sd/-

(J.P. SINGH)

Deputy General Manager  
Appellate Authority

Heard learned representative of the parties and perused entire evidence on record carefully. It is not out of place to mention here that the worker filed the written argument as well. The worker in the written argument has made wild allegations against the officers of the bank and has also challenged the departmental enquiry. The worker has argued that the charges were false and fabricated. Since

the preliminary issues regarding the departmental enquiry has been decided against the workman therefore such submissions about the fairness of enquiry is of no use. Worker has in the last two paragraphs has written that the disciplinary authority has admitted that charge No. 2 is minor misconduct and in the circumstances there is no room for the "dismissal" as per the Bipartite settlement and the imposing of punishment of dismissal for charge No. 2 makes it clear that the order was passed by the disciplinary authority due to mala fide intention as he was prejudiced.

During the course of oral arguments also only this fact was emphasised that charge No. 2 was a minor conduct and even then the worker was punished with the order of dismissal.

Worker has filed enclosures with the written argument which are as follows :

1. Photostat copy of chargesheet dt. 28-7-97 which describes 3 set of charges on the alleged facts as described on page Nos. 1 and 2 of the award. Alleged fact constitute violation of clause 19.5(j) of the Bipartite Settlement as gross misconduct, clause 19.7(j) of the Bipartite settlement as minor misconduct and clause 19.5(q) of the Bipartite settlement as gross misconduct.
2. Photostat copy of the worker's own application undated with a seal of the bank showing it to be delivered in March 1997. The application is in nature of complaint of officers of the bank.
3. Photo copy of complaint dt. 10-2-97 made by the worker to the bank Manager.
4. Photo copy of undersigned complaint of 12-4-97.

Two photostat copies of case laws have been filed by the worker. 1st is from West Bengal between Macfarlane & Co. Ltd. and Gaya Prasad. There is no citation of Journal. It appears to be the judgement of Industrial Tribunal, West Bengal (Calcutta). The judgement is about the summary dismissal. It has no relevance to the facts of this case. 2nd is from Hon'ble High Court of Allahabad passed in Avinash Chandra Sanjar and Divisional Superintendent, Central Railway, Jhansi and others (Civil misc. No. 2556 of 1959 Dated 24th March 1961). No argument have come on behalf of the worker as to how the said case law is applicable to the facts of the present case.

Worker has stated in his cross-examination that the Appellate authority did not apply its mind. Worker has tried to say that the appellate authority passed the order under pressure of Divisional Manager. Subsequently he stated that all the officers of the bank pressurised the Dy. General Manager including Chief Officer, General Administration. I have perused the order of Appellate Authority and find that the Appellate authority has taken into consideration all facts and circumstances of the case together with documents and has passed well reasoned order. The only mistake committed by the disciplinary authority as well as the Appellate authority is that they

have mentioned charge to be proved but have ordered for compulsory retirement of the worker without disqualification of the future employment. This mistake has according to me is the accidental slips. The charge was that the worker became annoyed with the customer of the bank Sri Yatish Kumar Sharma and also abused him and pushed him too. The second part is that he was in habit of delaying to release of vouchers from Cash Deptt. as a result for which issuance service was badly effected and many times he has been misbehaving the customers from the bank at the Extension counter which is damaging to the image of the bank. Thus besides that the said act constituted gross misconduct and also a minor misconduct as this also relate to neglect of work and negligence in performing duties. The fact alleged proved and since the facts alleged stand proved the worker was punished with by the disciplinary authority as dismissal without notice from the bank, however, that stood modified by the Appellate authority and he was compulsorily retired from bank service without disqualification from future employment. The charge No. 2 cannot be separated from the main allegations of misbehaviour with the customers of the bank and it is due to that reason the Appellate authority has committed accidental slip. It has not been argued on behalf of the workman that charge Nos. 1 and 3 are not gross misconduct and dismissal is not the proper punishment. In the event of gross misconduct committed as per rules the employee could be dismissed from services without notice. I am of the considered opinion that Appellate authority did apply its mind but committed an accidental slip by ordering compulsory retirement in respect of charge No. 2. The worker has not argued that the punishment for Charge Nos. 1 and 3 are inadequate.

It has also not argued on behalf of the worker that punishment is disproportionate to the act, alleged and proved to have been committed by the worker and no prayer has come forward to the extent of reducing the punishment. However, I have perused the provisions of Section 11A of Industrial Disputes (C) Act, 1947 in the light of the facts and circumstances of the case.

It has been laid down by the Hon'ble Supreme Court in (2005) 3 Supreme Court Cases 134 Mahindra and Mahindra Ltd. Vs. N.H. Naravade it is held that "It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgements of this court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the deduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing,

the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment." As noticed hereinabove at least in two of the cases cited before us i.e. Orissa Cement Ltd. and New Shorrock Mills this Court held: "Punishment of dismissal for using of abusive language cannot be held to be disproportionate." In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilised society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absenc of any extenuating factor referred to herinabove.

Learned counsel for the respondent contended that there was sufficient provocation for the use of such words because the workman was asked to do certain work which was impossible to be done by any person without causing harm to himself, but this is not the defence that was taken in the enquiry or before the Labour Court and is being argued for the first time before the Court. On the contrary, the sole defence of the workman was that he did not remember abusing the Engineer concerned.

We may also note here that the learned counsel for the appellant has pointed out from the records that the workman was chargesheeted more than once on earlier occasions and in spite of the gravity of the offence he was dealt with leniently. He pointed out that once such earlier instance this workman had assaulted his co-worker with a galvanised pipe causing grievous injury, even then he was punished with 4 days suspension only which according to the learned counsel clearly shows that the appellant management it, not being vindictive.

Taking into consideration the overall fact situation and the law laid down by this court and in spite of the fact that three courts have concurrently come to the conclusion that the punishment of dismissal would be disproportionate to the misconduct, we will have to disagree with those findings.

It has further been held by the Hon'ble Supreme Court in (2007) 1 Supreme Court Cases (L&S) 151 between APSRTC Vs. Raghuda Siva Sankar Prasad held that "It is also not open to the Tribunal and Courts to substitute their subjective opinion in place of the one arrived at the domestic tribunal. In the instant case, the opinion arrived at by the corporation was rightly accepted by the Tribunal but not by the Court. We therefore, hold that the order of reinstatement passed by Single Judge and the Division Bench of the High Court is contrary to the law on the basis of a catena of decisions of this court. In such cases, there is no place for generosity or sympathy on the part of the judicial forums for interfering with the quantum of punishment of removal which cannot be justified. Similarly, the High Court can modify the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved."

In (2005) 6 Supreme Court Cases 321 between Canara Bank Vs. V.K. Awasthy the Court laid down that "The scope of inference with the quantum of punishment has been the subject matter of various decisions of this court. Such interference cannot be a routine matter."

It is well settled law now, that discipline at the work place is of paramount importance. A reputed bank has to be recognised by its service, curtsy to its customers and act of misbehaviour and insulting to a customer brings bad name to the entire bank and the bank's interest suffers adversely. Any complaint against the worker is prejudicial to the interest of the bank and therefore the punishment of compulsory retirement from service is not disproportionate to the act committed by the worker. The Appellate authority has already shown lenient view to the worker in modifying the punishment from dismissal to the compulsory retirement without any further disqualification. Therefore, the act of the management of UCO Bank in compulsorily retiring Sri Narkesh Kumar Varshney is legal and justified and in the circumstances worker is not entitled to any relief.

Lucknow  
31-7-2007

SHRIKANT SHUKLA, Presiding Officer

नई दिल्ली, 9 अगस्त, 2007

का. आ. 2505.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, बंगलौर के पंचाट (संदर्भ संख्या 65/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/79/1995-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 9th August, 2007

S.O. 2505.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/1997) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial Dispute between the employers in relation to the Management of Canara Bank and their workman, which was received by the Central Government on 7-8-2007.

[No. L-12012/79/1995-IR (B-II)]

RAJINDER KUMAR, Desk Officer

#### ANNEXURE

BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
BANGALORE

Dated : 27th July, 2007

PRESENT

Shri A. R. Siddiqui, Presiding Officer

#### C. R. NO. 65/1997

Sri C. Gajaraja, : I Party  
S/o Shri Chikkamuniyappa,  
Vishwanathapura,  
Devanahalli Taluk,  
Bangalore

The General Manager, : II Party  
Canara Bank, Head Office,  
J. C. Road,  
Bangalore

#### AWARD

The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No. L-12012/79/95-IR (B-II) dated 27th July, 1995 for adjudication on the following schedule :

#### SCHEDULE

"Whether the action of the management of Canara Bank, Bangalore in terminating the services of Shri C. Gajaraja, Casual Workman w.e.f. 12-10-1993 and not considering him for permanent absorption in terms of the 'Approach Paper' circulated by the M/finance in 1990 is legal and justified ? If not, to what relief is the said workman entitled ?"

2. The case of the first party workman, as made out in the Claim Statement, in brief is that he was working as a Daily Wage employee in the Vishwanathapura Branch of the Management Bank since 29-4-1986 doing all kinds of work allotted to him, satisfactorily. At para 4, he contended that he worked continuously w.e.f. 1986 till 5-10-1986 in various capacities and at branches of the management namely, Vishwanathapura, Bangalore City, Inspection Department etc. At para 6 he contended that on 11-10-1993, the management without assigning any reason stopped giving work to him. At Para 7, he contended that he worked continuously and has put in service of more than 5 years and his services were terminated without any reasons. Then he contended that his termination was bad in law amounting to retrenchment as defined under Section 2(oo) of the ID Act, and in violation of Section 25F of the ID Act. He requested the court to set aside the termination order and to reinstate him in service with all consequential benefits including continuity of service and full back wages.

3. The case of the management put forth by way of Counter statement, in nut shell, is that the first party was being engaged as a Coolie on daily wage basis during the period from 1986 to 1992 intermittently as and when his services were required in place of sub staff going on leave or to attend some additional miscellaneous work; that the bank has got panel of daily wagers for each district and it is supposed to engage daily wagers from the said panel. A candidate has to go through the selection process to be sponsored through the Employment Exchange so as to include his name in a panel of daily wages. In case of vacancy of sub staff post, a daily wager on the list of the panel will be considered for the post subject to the seniority

and the fulfillment of prescribed qualification, age etc; that the name of the first party never found place in the daily wages panel. The management at Para 8 of the Counter Statement has given the details of the days worked by the first party during the year 1986 to 1992, which details I would like to come a little later. Therefore, the management contended that in no calendar year the first party worked continuously for a period of 240 days and more during the aforesaid period nor his name found place in the panel prepared by the bank as Daily Wager so as to consider him for the purpose of absorption in services, that too, on fulfilling the various requirements much less his name being sponsored through the Employment Exchange. In the result, the management requested this tribunal to reject the reference.

4. During the course of trial, the management examined the Manager of Canara Bank, Madhavanagar Branch, Bangalore as MW1 and in his examination chief got marked documents at Ex. M1, M1 (a) to M1 (g), M2 to M7. His statement in examination chief with reference to the documents runs as under :—

"I now see the General Charges Register for the period from February, 1986 to 31st March, 1993, which is at Ex. M1. The relevant entries for payment of 18 days coolie charges is at Ex. M1 (a), corresponding voucher is at Ex. M2.

In the year 1987, the first party was engaged just for two days, the relevant two entries for the payment are at Ex. M1(b). The voucher for the payment on 4-5-1987 is at Ex. M3, the voucher for the other day is not available.

In the year 1988, the first party was engaged for 3 days in May, 3 days in the month of July, 1 day in the month of June, 5 days in August, 4 days in October, 5 days in November and December 3 days. The relevant entries are marked at M1(c) series. The corresponding vouchers except for 1 in the month of June, and 3 in the month of August are marked at Ex. M4 series.

In the year 1989, the first party worked for 27 days. The relevant entries are at Ex. M1(d) series. The corresponding vouchers except for 2 payments are at Ex. M4 series.

In the year 1990, he worked for 18 days as per the entries made at Ex. M1(e) series. The corresponding vouchers are at Ex. M5 series.

In the year 1991, he worked for 3 days only as per the entry at M1(f) series. Two vouchers are not available and one is at Ex. M6.

In the year 1992, he worked for 5 days as per Ex. M1(g) series the corresponding vouchers are not available.

The management has also produced another General Charges Register for the period from April 1993 to October 1995 which is at Ex. M7. The name of the first party does not figure in the above said period.

He was not engaged subsequent to 1992. He is not entitled to relief of absorption as claimed by or any relief."

5. The first party filed his affidavit evidence by just repeating the various averments made in his claim statement and has got marked 3 documents at Ex. W1 to W3 in support of his claim. Ex. W1 is the letter dated 2-12-1996 seeking information as to whether the first party worked for more than 240 days in 1995-96 as claimed by him in the application submitted to the management bank. Ex. W2 is said to be the copy of the letter of undertaking given by the first party to the Deputy General Manager, Staff Section, Circle Office, Bangalore stating that he undertakes to withdraw the court case as soon as the bank considered his name to the post of sub staff on the basis of his working as Daily Wager since 1986. Ex. W3 is the Staff Circular No. 9 dated 21-4-1991 issued to all the offices of the bank in terms of the agreement reached with State Bank of Mysore Employees Union to consider for appointment of temporary subordinate staff to permanent in case he/they put in a minimum of 90 days total service between 1-11-1984 and 31-12-1989 subject to fulfillment of the eligibility criteria like age/educational qualification etc. I would like to come to the statements of MW1 and MW2 in their cross-examination as and when found relevant and necessary.

6. Learned, counsel for the first party Shri MVC for Shri KVS, vehemently, argued that the first party worked with various branches of the management but the management examined MW1 only to speak to his services rendered at Viswanathapura branch and also failed to produce documentary evidence for the services rendered by the first party at different branches of the management bank and therefore, his statement will not help the management to substantiate the fact that the first party did not work for 240 days continuously at any of the branches of the management bank, much less, Viswanathapura branch. He then referred to the aforesaid undertaking given by the first party saying that he had given that undertaking on the assurance given by the management bank. He also referred to the aforesaid circular to suggest that the first party fulfilled the prescribed condition of minimum service of 90 days between 1984 and 1989 to be considered for absorption in service.

7. Whereas, learned counsel for the management Shri TRKP argued that from the statement of MW1 giving out the details of the days worked by the first party between 1986 and 1992, would make it abundantly clear that in no calendar year the first party worked for a period of 240 days and more. His next contention was that the first party was never brought on daily wagers panel, therefore, there was no question of he being considered for absorption of his services in terms of any circular issued by the Ministry of Finance in the year 1990 or in terms of the aforesaid circular at Ex. W3. His contention was that the first party being engaged as a Coolie as and when his services were required and therefore, he was not engaged as a daily wager to find place in the daily wagers panel so as to be considered for permanent absorption. He also contended that the case

of the first party as made out in the Claim Statement is self-conflicting and self denial on the point of the period of service rendered by him either at Viswanathapura branch or any other branch. He argued that the burden heavily cast upon the first party workman himself to establish the fact of his continuous service of 240 days and more in a particular calendar year and it has not been established by him either by producing a single scrap of paper or by challenging or denying the statement of MW1 during the course of his cross examination on the vital particulars of the case.

8. On going through the evidence brought on record, I find substance in the arguments advanced for the management. As could be read from the statement of MW1 brought on record, the first party workman worked at Viswanathapura branch between 1986 and 1992 as per the General Charges Register for the period from February 1986 to March 1993 produced before this court at Ex. M1. The relevant entries for payment of 18 days coolie charges is at Ex. M1(a) and the corresponding vouchers is at Ex. M2. Similarly from the two relevant entries for the payment made against two working days for the year 1987 is at Ex. M1(b) and the voucher for the payment dated 4-5-1987 is marked at Ex. M3. The statement further says that the first party was engaged for 3 days in the month of May, 3 days in the month of July, one day in the month of June, 5 days in August, 4 days in October, 5 days in November and 3 days in December in the year 1988. Those relevant entries were marked at Ex. M1(c) series and the corresponding vouchers except for one entry in the month of June and the three entries in the month of August are marked at Ex. M4 series. In the year 1989, the first party is shown to have worked for 27 days as per the relevant entries made at Ex. M1(d) series and the corresponding vouchers except for two payments are at Ex. M4 series. In the year 1990 he worked for 18 days as per the entries made at Ex. M1(e) series vide voucher at Ex. M5 series. In the year 1991, he worked for 3 days only as per the entry at Ex. M1(f) series and one of the three vouchers is at Ex. M6. He worked for 5 days as per Ex. M1(g) series in the year 1992. MW1 has further stated the first party was never engaged subsequent to 1992 and relied upon another General Charges Register produced at Ex. M7 for the period from April 1993 to October 1995 wherein the name of the first party never figured. This statement of MW1 on the material particulars and the details given by him speaking to the number of days the first party worked during the year 1986 to 1992 with reference to the documents referred to supra, very strangely, has not been challenged by the first party in his cross examination and not a single suggestion was made to MW1 challenging the above said statement, much less, challenging the periods the first party was engaged with the bank intermittently between 1986 and 1992 at the above said Viswanathapura branch. The only suggestion made to MW1 was that his statement was restricted to only Viswanathapura branch and does not pertain to the other branches where the first party was supposed to have worked. Therefore, there being absolutely no denial of the fact of the period of service mentioned by MW1 in his examination chief, it is very difficult to believe that the first

party worked with the management bank between 1986 and 1992, continuously for a period of 240 days. As noted above, indirectly the first party had admitted the entire statement of MW1 giving out the details of all facts and figures during which period he was engaged by the bank in between 1986 and 1992. As per the statement of MW1 and the documents referred by him the first party hardly worked for a total period of 97 days in between 1986 and 1992. Now, coming to the statement of first party himself in his affidavit as well as in his cross-examination, it was well argued for the management that the claim of the first party is liable to be rejected firstly, for the reason that it is self conflicting and self contradictory. As noted above, as per the reference schedule his services are alleged to have been terminated w.e.f. 12-10-1993 and whereas, the first party at para 4 of the claim statement as noted above, came out with the case that he worked with the management bank different branches from 29-4-1986 to 5-10-1996. At para 6, as noted above, he wanted to say that his services were terminated on 11-10-1993 and whereas, at para 7, he contended that he had put in continuous service of more than 5 years. Therefore, in one breath he says that he worked with the management bank from 1986 till 1996 i.e. for a period of 10 years and in other breath he says that he has put in 5 years of continuous service as on the date his services were terminated. If really, the first party worked beyond the period of October 1993 as claimed by himself in the Claim Statement the very reference on hand is liable to be rejected on the ground that there was no termination of his services by the management in the month of October 1993. That apart, as contended for the management not a single document or a scrap of paper has been produced by the first party to substantiate his claim before this tribunal that he worked for a period of 240 days and more continuously in each of the calendar year between 1986 and 1993 much less for a total period of 240 days and more during the aforesaid period. The document at Ex. W1 in fact, pertained to the information sought for in respect of the services rendered by the first party in the year 1995-96, to which period we are not concerned keeping in view the reference schedule point. Ex. W2 has absolutely no bearing on the case and the controversy between the parties. We do not know as to what made the first party to give such an undertaking. It just cannot be believed that he has given such an undertaking being assured by the management for considering his case for the post of sub staff. The Circular at Ex. W3 also will not becoming to the rescue of the first party as undisputedly, he did not put in minimum of 90 days total service in between 1-11-1984 and 30-11-1989. From the statement of MW1 referred to supra and which has not been controverted on behalf of the first party in his cross-examination, the first party worked for a total period of 71 days between the year 1986 and 1989, therefore, he cannot be having any grievance if his claim was not considered for appointment of temporary subordinate staff as contemplated in the above said circular. The first party has not brought to the notice of this tribunal the circular which in fact, was referred in the reference schedule so as to make out a case that he was entitled for relief of permanent absorption in terms of the said circular. Therefore, as the things stand, we have got ample, sufficient and legal

evidence on the part of the management oral as well as documentary to speak to the fact that the first party never worked for a period of 240 days and more continuously either in a particular calendar year or during whole of the period between 1986 and 1993. The documents further disclosed that the first party in fact, never worked with the management bank in the year 1993. His contention that he worked with different branches of the management bank again has been falsified by the aforesaid General Charges Register produced by the management marked at Ex. M7. It is not the case of the first party workman that it is in between 1986 and 1993, he worked with the different branches of the management bank. What appears from his contention from the claim statement is that till the time he was removed from service he was in fact, working with the abovesaid Viswanathapura branch and therefore, it is in this view of the matter the evidence produced by the management in the statement of MW1 and the documents referred to supra are the very much material and relevant for the purpose to decide the controversy between the parties. It is well settled principle of law that in the cases like on hand, the burden primarily will be cast upon the shoulders of the first party/workman to substantiate his allegation that he worked for a period of 240 days and more in order to attract the provisions of Section 2(o) of the ID Act. In the instant case in fact, it is the management which has come out with the sufficient and legal evidence to disprove the claim of the first party workman and the first party workman, himself, except his self serving testimony that too conflicting on the point of the period of services he rendered with the management bank has not produced a single piece of paper. His document at Ex. W1 in fact, goes against his own claim as it pertained for the period 1995-96 and whereas, the alleged termination of his services as per the reference schedule has taken place in the month of October 1993. In the result, and for the reasons foregoing, the conclusion to be drawn would be that the claim of the first party deserves no merit. Hence the following Award :

#### AWARD

The reference stands dismissed. No costs.

(Dictated to PA, transcribed by her, corrected and signed by me on 27th July 2007).

A. R. SIDDIQUI, Presiding Officer

नई दिल्ली, 14 अगस्त, 2007

का. आ. 2506.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार माइन्स बिड़ला सीमेन्ट वर्क्स, चित्तौड़गढ़ के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या केस नं. सीआईटी-13/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-8-2007 को प्राप्त हुआ था।

[सं. एल-29011/27/1993-आई आर (एम.)]

एन. एस. बोरा, डेस्क अधिकारी

New Delhi, the 14th August, 2007

S.O. 2506.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. Case No. CIT-13/1994) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Mines Birla Cement Works, Chittaurgarh and their workmen, which was received by the Central Government on 14-8-2007.

[No. L-29011/27/1993-IR (M)]

N. S. BORA, Desk Officer

अनुबन्ध

औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 13/1994

रिफरेंस :

केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल-29011/27/93-आइ.आर. (मि.) दिनांक 10-5-1994

श्री जगू पुत्र श्री भैरा जाट ग्राम कीर खेड़ा, तहसील व जिला चित्तौड़गढ़ द्वारा बी.एम. बागड़ा, जयपुर .....प्राथी

बनाम

एजेन्ट एवं सहायक वाईस प्रेसीडेंट, जनरल मैनेजर, माइन्स बिड़ला सीमेन्ट वर्क्स, चित्तौड़गढ़ .....अप्राथी

उपस्थित

पीठासीन अधिकारी : श्री गौतम प्रकाश शर्मा, आर.एच.जे.एस.

प्राथी की ओर से : श्री बी. एम. बागड़ा

अप्राथी की ओर से : श्री आर. के. जैन

दिनांक अवार्ड : 1 मई, 2007

अवार्ड

1. केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का उपरोक्त अधिसूचना द्वारा श्रमिक श्री जगू पुत्र श्री भैरा जाट, असिसटेंट लाईमस्टोन माइन्स की सेवाएं प्रबन्धक बिड़ला सीमेन्ट वर्क्स चन्दोरिया द्वारा दिनांक 20-12-1992 से बर्खास्त करने की कार्यवाही उचित एवं न्यायसंगत है या नहीं, संबंधी विवाद इस न्यायाधिकरण को अधिनिर्णय हेतु निर्दिष्ट किया गया है।

2. प्राथी की ओर से स्टेटमेंट ऑफ क्लेम पेश किया गया जिसके संक्षिप्त तथ्य इस प्रकार हैं कि प्राथी को नियोजक के यहां डम्पर ड्राइवर के पद पर रखा गया था और दिनांक 10-12-1987 को सेवा से अलग कर दिया जिसके लिए 26-6-1990 को अवार्ड पारित होने पर प्राथी को माइन्स गैरेज विभाग में असिस्टेंट के पद पर लगाने हेतु 7-11-1990 को आदेश जारी किये गये। तब से प्राथी ईमानदारी व मेहनत से उक्त पद पर काम कर रहा था कि उसे दिनांक 19-12-1992 के आदेश से

दिनांक 23-12-1992 से सेवा पृथक् कर दिया। उक्त सेवामुक्ति को इस आधार पर श्रमिक ने अनुचित बताया है कि उसे परेशान करने की दृष्टि से आरोप-पत्र दिया गया जबकि उसे आंबटित क्वार्टर में वह उसकी पत्नी एवं बच्चे ही रहते थे और किसी अन्य को उसने क्वार्टर किराये पर नहीं दिया था। आरोप पत्र से संबंधित दस्तावेज उसे नहीं दिये गये जिससे वह अपना जवाब पेश नहीं कर सका, जांच प्रतिवेदन की प्रतिलिपि उसे नहीं दी गई। जांच में बचाव व सुनवाई का मौका प्रार्थी को नहीं दिया गया तथा नियोजक के गवाह से नियोजक प्रतिनिधि को ही जिरह का मौका दिया जबकि यह अधिकार श्रमिक का है। इस प्रकार जांच को प्राकृतिक न्याय के सिद्धान्तों के विपरीत बताते हुए प्रार्थी का कथन है कि उसने कोई दुराचरण नहीं किया है अतः सेवामुक्ति आदेश दिनांक 19-12-1992 अपास्त किया जाकर प्रार्थी को पूर्ण वेतन सहित मय सेवा की निरन्तरता के सेवा में बहाल करने का अवार्ड पारित किया जावे।

3. अप्रार्थी की ओर से क्लेम का जवाब पेश किया गया जिसके अनुसार प्रार्थी श्रमिक को कम्पनी का क्वार्टर सं. एम-8/3 स्वयं के निवास हेतु आंबटित किया गया था। कम्पनी द्वारा दिनांक 31-3-1992 को श्री जगू जाट को आंबटित क्वार्टर को खाली नहीं करने व क्वार्टर किसी अन्य व्यक्ति को सबलैट करने के संबंध में आरोप लगे गये। कम्पनी के स्थाई आदेशों के तहत प्रार्थी द्वारा किये गये दुराचरण गंभीर दुराचरण की परिभाषा में आते हैं जिनके संबंध में दिये गये स्पष्टीकरण से संतुष्ट नहीं होने पर नियमानुसार जांच कराई गई। प्रार्थी जांच में दिनांक 20-5-1992 की पेशी पर मय प्रतिनिधि उपस्थित हुआ जिस दिन नियोजक के गवाह की साक्ष्य हुई और प्रार्थी को जिरह का अवसर दिया गया। अगली पेशी दिनांक 5-6-1992 पर भी प्रार्थी मय बचाव प्रतिनिधि उपस्थित आया और कम्पनी के अगले साक्षी की साक्ष्य लेखबद्ध की गई और प्रार्थी प्रतिनिधि को उस साक्षी से जिरह का अवसर दिया गया। अगली पेशी 15-6-1992 को बावजूद सूचना के प्रार्थी अथवा उसके प्रतिनिधि उपस्थित नहीं आये फिर भी न्याय हित में 18-6-1992 की तारीख की सूचना प्रार्थी को भेजी गई। 18-6-1992 को भी प्रार्थी अनुपस्थित रहा और अनुपस्थिति की कोई सूचना भी जांच अधिकारी को नहीं भेजी। तब एकपक्षीय जांच कार्यवाही के आदेश हुए और जांच पूरी कर जांच अधिकारी ने नियमानुसार अपना जांच प्रतिवेदन अनुशासनिक अधिकारी के समक्ष पेश किया जिसकी प्रति प्रार्थी के घर के पते व कम्पनी में भी प्रेषित की गई। जांच प्रतिवेदन व उपलब्ध दस्तावेजों व रिकार्ड के अवलोकन के पश्चात् प्रार्थी को दिनांक 19-12-1992 के पत्र द्वारा दिनांक 20-12-1992 से कम्पनी की सेवाओं से पदच्युत कर दिया गया। इस प्रकार समस्त जांच नियमानुसार व प्राकृतिक न्याय के सिद्धान्तों के अनुरूप की गई है और प्रार्थी को बचाव व सुनाई का पूरा अवसर दिया गया है।

4. जवाब के भाग 'ब' में अप्रार्थी का कथन है कि क्वार्टर सं. एम-8/3 में प्रार्थी के कथनानुसार उसकी पत्नी नन्दू निवास करती है पूर्णतया गलत है क्योंकि ग्रेच्युटी संदाय घोषणा में उसकी पत्नी का नाम बरजी जाट अंकित किया हुआ है। अतः सेवामुक्ति आदेश को उचित बताते हुए अप्रार्थी ने प्रश्नगत आदेश को पूर्णतः उचित एवं वैध बताया है तथा प्रार्थी का क्लेम खारिज किये जाने की प्रार्थना की है।

5. प्रकरण बहस फयरनेस हेतु निश्चित था तब दिनांक 3-8-2000 को पक्षकारान के प्रतिनिधिगण ने जाहिर किया कि प्रार्थी श्रमिक की मृत्यु हो चुकी है और प्रार्थी के बरिसान की ओर से उनकी पत्नी श्रीमती बरजी ने उत्तराधिकारिणी होने के नाते पक्षकार बनाये जाने का प्रार्थना-पत्र पेश किया जो स्वीकार किया गया। पत्रावली पर श्री जगू का मृत्यु प्रमाण-पत्र व श्रीमती बरजी का उत्तराधिकारी होने का प्रमाण-पत्र संलग्न है।

6. श्रीमती बरजी पत्नी स्व. श्री जगू जाट एवं प्रबन्धक पक्ष की ओर से एक संयुक्त प्रार्थना-पत्र इस आशय का प्रस्तुत किया गया कि हस्तगत प्रकरण में दोनों पक्षों के मध्य आपसी एवं लोक अदालत की भावना से समझौता हो गया है और समझौते के आधार पर प्रकरण में अवार्ड पारित कर दिया जावे। प्रार्थना-पत्र के साथ समझौते की प्रति भी पेश की गई है। समझौता तसदीक किया गया।

7. मैंने प्रस्तुत समझौते का अवलोकन किया जिसके अनुसार श्रीमती बरजी जाट को रुपये 47337.59 दिनांक 12-4-2007 को जरिये चैक नं. 973355 दिनांक 11-4-2007, एस.बी.बी.जे. की चित्तोड़गढ़ शाखा द्वारा अदा कर दिये गये हैं जिसके फलस्वरूप श्रीमती बरजी जाट व कम्पनी के मध्य अब किसी प्रकार का विवाद शेष नहीं रह जायेगा तथा उसके किसी भी वारिसान द्वारा कम्पनी के विरुद्ध कोई विवाद नहीं उठाया जायेगा। समझौता पढ़कर प्रार्थीया को सुनाया गया जो सही होना स्वीकार किया। समझौते के साथ दी गई राशि के विवरण की प्रति एवं प्राप्त राशि की रसीद जिस पर श्रीमती बरजी के दायें अंगूठे का निशान है भी पेश की गई है। इन हालात में मेरी राय में दोनों पक्षों द्वारा प्रस्तुत यह प्रार्थना-पत्र स्वीकार किये जाने योग्य है जो स्वीकार किया जाता है और प्रकरण में निम्न अवार्ड पारित किया जाता है :

“दोनों पक्षों द्वारा प्रस्तुत प्रार्थना-पत्र के साथ प्रस्तुत समझौते की शर्तों के अनुसार प्रकरण में अवार्ड पारित किया जाता है जिसके अनुसार श्रीमती बरजी देवी ने अप्रार्थी कम्पनी से रुपये 47,337.59 जरिये चैक नं. 973355 दिनांक 11-4-2007 प्रार्थी स्वर्गीय श्री जगू जाट की उत्तराधिकारिणी के रूप में प्राप्त कर लिये हैं और इसके बाद कम्पनी के साथ प्रार्थीया का किसी प्रकार का विवाद शेष नहीं रहता है। समझौता अवार्ड का अंग रहेगा।”

8. अवार्ड आज दिनांक 1 मई 2007 को खुले न्यायालय में लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।

1-5-2007

गौतम प्रकाश शर्मा, न्यायाधीश

नई दिल्ली, 14 अगस्त, 2007

का. आ. 2507.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार (i) ब्रिटिश एक्सप्लोरेशन एवं प्रोडक्शन इंडिया लिमिटेड, (ii) ऑयल एवं नेचुरल गैस कॉर्पोरेशन लिमिटेड (iii) ऑयल फ़िल्ड कन्सलटेन्ट एवं सर्विस प्राईवेट लिमिटेड के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार,

औद्योगिक अधिकरण/श्रम न्यायालय, सं.-2, मुम्बई के पंचाट (संदर्भ संख्या सीजीआई टी-2/73/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-8-2007 को प्राप्त हुआ था।

[सं. एल-30012/4/2001-आई आर (एम.)]

एन. एस. बोरा, डेस्क अधिकारी

New Delhi, the 14th August, 2007

**S.O. 2507.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-2/73/2001) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of (i) British Exploration & Production India Ltd., (ii) Oil & Natural Gas Corporation Ltd. (iii) Oil Field Consultants & Services Pvt. Ltd. and their workmen, which was received by the Central Government on 14-8-2007.

[No. L-30012/4/2001-IR (M)]  
N. S. BORA, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

#### PRESENT

Shri A. A. Lad, Presiding Officer

Reference No. CGIT-2/73 of 2001

Employers in relation to the Management of :

1. British Gas Exploration & Production India Ltd.,  
Midas Sahar Plaza, Kondivita, M. V. Road,  
Andheri (E), Mumbai-400 059
2. Oil & Natural Gas Corporation Ltd. #  
Vasudhara Bhavan, Bandra (E),  
Mumbai-400 051
3. Oilfield Consultants & Services Pvt. Ltd.  
8, Nyayadeep Raviraj Complex,  
Near Laxmi Industrial Estate,  
Andheri (W),  
Mumbai-400 053

AND

Their Workman.

Shri Prakash L. Kamalapur,  
1649, Kuchan Nagar (90, Indira Nagar),  
Solapur-413 005

#### APPEARANCES:

For the Employer No. 1 : Mr. G. L. Govil, Advocate.  
For the Employer No. 2 : Mr. S. A. Patil, Representative.  
For the Employer No. 3 : Mr. G. M. Joshi, Advocate.  
For the Workman : Mr. M. B. Anchan, Advocate.

Mumbai, dated 17th July, 2007

#### AWARD

The facts of the reference are as under :

1. The Government of India, Ministry of Labour, by its order No. L-30012/4/2001-[IR(M)] dated 16-5-2001 in exercise of the powers conferred by clause (d) of sub-section (1) of Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of British Gas Exploration & Production India Ltd., Mumbai in dismissing the services of Mr. Prakash L. Kamalapur, an ex-Instrument Technician w.e.f. 11-06-1999 is legal and justified ? If not, to what relief the workman concerned is entitled for ?"

2. Claim statement is filed by concerned workman at Ex.-5 which is disputed by Management No. 2 by filing written statement at Ex.-22 and Management No. 3 at Ex.-29. Issues were framed at Ex.-42.

3. Today, Workman filed purshis at Ex.-45 submitting that, he does not want to proceed with the reference as dispute is settled out of Court. Even Advocate of the First Party and Advocate for Second Party workman consented to the said request of the second party workman who also admit regarding writing on Ex.-45. Hence the order :

#### ORDER

In view of Ex.-45, this reference is disposed of.

Date : 17-07-2007.

A. A. LAD, Presiding Officer.

Exh. No. 45

#### BEFORE THE HONOURABLE CENTRAL GOVERNMENT TRIBUNAL NO. 2, SION, MUMBAI

Ref. CGIT-2/73 of 2001

#### BETWEEN

M/s. OCS Consultants Pvt. Limited .... First Party No. 3

AND

Mr. Prakash L. Kamalapur ..... Second Party

#### WITHDRAWAL PURSHIS

#### MAY IT PLEASE THIS HONOURABLE TRIBUNAL

In the above matter, the Second Party, Mr. Prakash L. Kamalapur and the First Party Company No. 3 have arrived at an amicable settlement. In view of the said settlement the Second Party is not interesting in pursuing and prosecuting the abovementined Reference.

In the aforesaid circumstances the Second Party, prays that this Honourable Tribunal be pleased to dispose

of the abovementioned Reference as settled out of Tribunal/Court.

Place : Mumbai

Dated : 17-7-2007. PRAKASH L. KAMALAPURE,  
Second Party

### NO OBJECTION

Sd/-  
G. M. JOSHI,  
Advocate

Sd/-  
Illegible  
Advocate ONGC

Sd/-  
G. L. GOVIL,  
Advocate for British Gas

Sd/-  
M. B. ANCHAN,  
Advocate for the workman

### RECEIPT-CUM-DECLARATION

Received with thanks from M/s. OCS Consultants & Services Pvt. Limited situated at 407/411, Oberoi Chamber-II, Plot No. 645/646, New Link Road, Andheri (W), Mumbai-400 053, a sum of Rs. 1,00,000 (Rupees One Lakh Only) by Demand Draft No 778078 dated 16-07-2007 drawn on ICICI Bank Limited, Lokhandwala Complex, Andheri, Mumbai Branch, in full and final settlement of all my dues, claims, rights, disputes and differences, against M/s. OCS Consultants & Services Pvt. Limited.

I declare that in lieu of receipt of the abovementioned amount of Rs. Rs 1,00,000. I have left no claim of any legal dues or earned wages, leave wages, notice pay, Retrenchment Compensation, Gratuity, Bonus, etc., whether applicable or otherwise for the entire period of my services or any part thereof against M/s. OCS Consultants & Services Pvt. Limited.

I further declare that I have resigned from the services of M/s. OCS Consultants & Services Pvt. Limited and that I have left with no claims against M/s. OCS Consultants & Services Pvt. Limited or M/s. British Gas Exploration & Production (India) Limited or M/s. Oil & Natural Gas Commission (ONGC) in terms of money and/or in terms of employment, re-employment or reinstatement.

I declare that I am not interested in pursuing and prosecuting the Reference CGIT-2/73 of 2001, pending before the Central Government Industrial Tribunal-2, Sion, Mumbai.

This receipt is passed by me willingly of my free will after having satisfied with the payment referred above received by me. The contents of this receipt is read over by me I have thoroughly understood the same.

Place : Mumbai  
Dated : 17-07-2007

PRAKASH L. KAMALAPURE,  
Second Party

Witnesses :

(M. B. ANCHAN)  
Advocate for the Workman

नई दिल्ली, 14 अगस्त, 2007

का. आ. 2508.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी. पी. सी. एल. के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या आई. डी. सं. 5/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-8-2007 को प्राप्त हुआ था।

[सं. एल-30012/26/2006-आईआर (एम.)]

एन. एस. बोरा, डेस्क अधिकारी

New Delhi, the 14th August, 2007

S.O. 2508.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. I. D. No. 5/2007) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of BPCL and their workmen, which was received by the Central Government on 14-8-2007.

[No. L-30012/26/2006-IR (M)]

N. S. BORA, Desk Officer

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 18th July, 2007

### PRESENT

Shri K. Jayaraman, Presiding Officer

Industrial Dispute No. 5/2007

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Neyveli Lignite Corporation Ltd. and their workmen]

### BETWEEN

Sri A. Ramachandran : I Party/Petitioner

AND

The DGM (HR), : II Party Management  
M/s. Bharat Petroleum  
Corporation Ltd.,  
No. 1, Ranganathan Garden,  
Anna Nagar (W),  
Post Bag 1212 and 1213,  
Off 11th Main Road,  
Chennai-600040

### APPEARANCE

For the Petitioner : Not Represented. Set ex parte

For the Management : M/s. T. S. Gopalan & Co.  
Advocates.

**AWARD**

The Central Government, Ministry of Labour vide Order No. L-30012/26/2006-IR (M) dated 24-1-2007 referred the following dispute to this Tribunal for adjudication.

The Schedule mentioned dispute in the order is :

“Whether the claim of Shri A. Ramachandran for reinstatement in service of BPCL, Tuticorin is legal and justified ? If so to what relief workman is entitled ?”

2. After the receipt of the Industrial Dispute this tribunal has numbered it by I. D. No. 5/2007 and issued notices to both parties. But petitioner has not appeared before this tribunal even after two notices served on him. Hence he was set ex parte. On the other hand the respondent appeared through their advocate and filed memo of objection.

3. The allegation in the memo of objection are briefly as follows :

The petitioner has worked only as a Casual Labour between 1994 and 2005 and was never employed as Workman under the respondent management. He has worked as a Casual Labourer in the leave vacancy of the permanent Workman. Since he was not employed by the respondent there is no question of termination arises. There was no relationship of “master and servant” between the respondent management and the petitioner and therefore this petition is not maintainable. Hence the respondents pray that this ID may be dismissed with costs.

**Points for determination are :**

- (i) Whether the claim of the petitioner for reinstatement in service of the respondent management is legal and justified ?
- (ii) To what relief the petitioner is entitled to ?

**Points 1 and 2 :**

4. As I have already pointed out even after two notices served on petitioner, the petitioner has not appeared before this Court and he was set ex parte on 26-4-2007 and the respondents has filed memo of objection. In their objection, the respondent alleged that there is no relationship of master and servant between the respondent and the petitioner and he was never employed the petitioner as workman. The petitioner has worked only as a Casual Labour in the leave vacancy of the regular worker and that too he has not worked continuously for 240 days in 12 calendar months. Since the respondent management has taken the stand that the petitioner was never employed as a Workman under its management, the burden of proving that he was engaged as Workman and has worked more than 240 days in a continuous period of 12 months is upon the petitioner. But the petitioner has not appeared before this Tribunal to establish this fact with any satisfactory evidence. Hence I find the petitioner is not entitled to any relief much less the relief of reinstatement.

Hence this petition is dismissed but without any costs.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open Court on this day the 18th July, 2007.)

K. JAYARAMAN, Presiding Officer

नई दिल्ली, 9 अगस्त, 2007

का. आ. 2509.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, मुम्बई के पंचाट (संदर्भ संख्या 2/111/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/119/2001-आई आर (बी-II)]

राजिन्द्र कुमार, डेस्क अधिकारी

New Delhi, the 9th August, 2007

S.O. 2509.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/111/2001) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of Dena Bank and their workmen, which was received by the Central Government on 9-8-2007.

[No. L-12012/119/2001-IR (B-II)]

RAJINDER KUMAR, Desk Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI****PRESENT**

Shri A. A. Lad, Presiding Officer

Reference No. CGIT-2/111 of 2001

**EMPLOYERS IN RELATION TO THE MANAGEMENT OF:**

**DENA BANK**

The Assistant General Manager (P),  
Dena Bank,  
7th Floor, Maker Towers, 'E' Wing,  
P. B. No. 6058,  
Cuffe Parade,  
Mumbai-400 005

AND

Their Workman

Smt. Manjulaben Velji Gohil,  
Ramdeo Veljinagar, Room No. 155,  
JR Boricha Marg,  
Opp. Kasturba Hostel, Authur Road,  
Mumbai-400 011

**APPEARANCES**

For the Employer : Ms. Nandini Menon, Advocate

For the Workmen : Mr. M. B. Anchan, Advocate.

Mumbai, dated 5th July, 2007

**AWARD**

The matrix of the reference are as under :

1. The Government of India, Ministry of Labour, by its order No. L-12012/119/2001-IR(B-II) dated 10-10-2001 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Dispute Act, 1947 have referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Dena Bank, Mumbai by terminating Smt. Manjulaben Velji Gohil from the services of the Bank is justified and proper ? If not, what relief the workman is entitled to ?”

2. Claim Statement is filed by Second Party at Ex.-10 making out case that, she joined first party as Sweeper-cum-Safaiwala from 1-1-1995 for monthly salary of Rs. 1,000. Said payment was made in two instalments with fifteen days gap from first one and she was permitted to work till 20-04-1999. Abruptly from 21-04-1999, she was stopped without assigning any reason and intimating he motive of the first party. Even she was not explained why she was prevented in reporting on duty. No notice was given, nor any action initiated by issuing charge-sheet or by holding enquiry before taking such action. First party abruptly prevented her from reporting on duty. So she prayed to quash and set aside alleged termination and request to permit her to report on duty with direction to first party to accept her as their employee.

3. This is objected by first party by filing reply at Ex.-30 making out case that, she was not engaged by first party as a result any appointment order nor by any correspondence made to accept her in the employment. She was not taken on regular basis. She was attending bank in the absence of regular employee and her payment was made on part time basis. She was not in the list of employees who are required to be considered for regularisation as per Bipartite Settlement, took place between Union and first party. Since she was not in the panel to be considered as a regular employee and she worked on temporary basis, claim made by her cannot be considered which does not invite this Court to issue any direction to first party regarding her demand.

4. In view of above pleadings, issues are framed at Ex.-14 which are answered against it as follows :

**ISSUES****FINDINGS**

- |  |     |
|--|-----|
| (i) Whether Ms. Gohil proves that she worked more than 240 days continuously with the bank ? | Yes |
|--|-----|

**ISSUES****FINDINGS**

- |  |                     |
|--|---------------------|
| (ii) Whether she further proves that bank retrenched her from 21-04-1999 contravening the provisions of Section 25F of the Industrial Disputes Act ?               | Yes                 |
| (iii) Whether the action of the management of Dena Bank, Mumbai by terminating Smt. Manjulaben Velji Gohil from the services of the Bank is justified and proper ? | No                  |
| (iv) What relief the workman is entitled to ?  | As per order below. |

**REASONS****Issue No. 1 :**

5. On the grievances of second party and due to failure in the conciliation proceeding, reference is sent for adjudication on the issue of action taken by first party in preventing her to report on duty mentioning whether it is justifiable or otherwise ? In that context second party made out case that she worked for more than 240 days and attract the protection of the provisions of Industrial Disputes Act. After completion of 240 days she became deemed employee of the first party and attract protection. As per that first party cannot terminate the employment of such employee without giving notice, without offering retrenchment compensation and without assigning any reason.

6. As far as working of 240 days by the second party with first party is concerned, it is not disputed by first party. The only case of the first party is that, no appointment order was given and she did not work on regular basis. That means, working of second party with first party for more than 240 days is not disputed and there one has to safely conclude that second party worked for more than 240 days with first party. When she succeeded in showing that she worked for more than 240 days, definitely workman of this type is protected by the provisions of Industrial Disputes Act. When she completed 240 days, which is not disputed by first party, I conclude that second party succeeded in showing her employment with first party. Moreover number of correspondence brought on record by second party including the recommendations made by the Chief Manager and Dy. General Manager reveals that her employment was needed with the first party, and they were requesting to regularise her employment. From all this it reveals that her employment with first party is not disputed and is accepted on the base that she worked temporarily. So, I answer this issue observing she worked with first party for more than 240 days.

**Issue Nos. 2 & 3 :**

7. Case of second party is that, without taking legal action she was terminated. Whereas case of first party is that, since she was not regularly employed question of following provisions of Industrial Disputes Act does not arise.

8. Much is relied by the first party on the citation of Apex Court and ratio laid while deciding appeal of Secretary, State of Karnataka & Ors, V/s. Uma Devi (III) and Ors. published in 2006 (IV) SCC page 1, as well as on citation published in 2006 (I) SCC 667, 2006 (VII) SCC 684, 2006 (I) SCC 479 & 2007 (I) SCC 257 and 408. In all these cases the workmen involved in those cases have requested to treat them as a regular employee of the employer. Whereas in our case which is in hand, workman is saying that she was illegally prevented from reporting on duty. It is her case that no notice was given nor retrenchment compensation offered and by violating all provisions of Industrial Disputes Act, she was prevented from reporting on duty. As far as these things are concerned those are not seriously considered by first party under the guise that, she was not regularly appointed and so she does not attract protection. As far as working of second party with first party for more than 240 days is concerned, is not disputed. As referred above, Chief Manager and Dy. Manager recommended her services to their offices and requested to regularise her employment. Whereas in above referred cases there was no such a proposal or persuasion from the officer of the employer to regularise the services of those employees involved in the above referred cases (supra). In the instant case her services are recommended and officers of the first party time and again were requesting to regularise her services. Besides there is no stigma about service of the second party. Even it is not case of first party that anybody is working in her place. The work of cleaning is perennial nature of work which subsists till bank survive and functions and when her services were utilized for 4 years which was not disputed and which is admitted by the witness of the Bank, in my considered view only because she was not interviewed or taken in the employment by following procedure cannot come in her way. And above all, when her services were utilized by the Bank and care was not taken by the Bank while accepting her services and scrutinized by it that, whether it is legal or otherwise, in my considered view poor workman of this type who are not much educated and work for Bank for meager amount of Rs. 1,000 p.m. cannot be blamed. On the contrary she cannot be held responsible for all those irregularity and it cannot be said that she managed all those and took backdoor entry as generally happens in Bank employment. She is a poor lady working as sweeper-cum-cleaner for 4 years and abruptly Bank prevented her from reporting on duty on the guise that no approval to regularise her is given by superior. When this type of employee is utilised by Bank and only because there was no permission to recruit the employee at their level and there was ban in recruitment and when there was work available which is not done by anybody in my considered view all that scenario must be considered while dealing with such type of employment.

9. Admittedly she worked for more than 4 years on post like cleaner-cum-sweeper. There was no appointment order and she was not regularised. Even she was not getting benefits of regular employment. Even her application was not taken and no appointment order was issued by first party. But when her employment was enjoyed by the first

party, then it was its responsibility to accept such an employment of legally appointed employee. When such an employment is enjoyed by first party on the guise that, 'there is ban on employment' on that count they cannot cut the relation of such an employee.

10. Considering all these and considering the employment of second party with first party for more than 4 years, first party cannot bring stop to such type of employment without following due process of law. So I observe action taken is illegal.

11. It is matter of record that second party is not concerned with first party w.e.f. 21-4-1999. First party is a Bank working for people and run its business on the trust of the people. That means money is of the people, so one has to take care of it. Besides second party did not work with first party from 21-04-1999. When she did not work she cannot claim wages from 21-04-1999. However she is entitled for employment with first party within three months from this order. Hence the order :

### ORDER

1. Reference is partly allowed.
2. First party is directed to take Mrs. Manjulaben Velji Gohil in its employment as Sweeper-cum-Cleaner within three months from this order as a regular employee.
3. Prayer of second party to give all benefits is rejected.

Date: 05-07-2007.

A. A. LAD, Presiding Officer

नई दिल्ली, 14 अगस्त, 2007

का. आ. 2510.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 189/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/633/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 14th August, 2007

S. O. 2510.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 189/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 14-8-2007.

[No. L-12012/633/1998-IR (B-1)]

AJAY KUMAR, Desk Officer

## ANNEXURE

BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
CHENNAI

Wednesday, the 31st January, 2007

PRESENT.

K. Jayaraman, Presiding Officer

INDUSTRIAL DISPUTE NO. 189/2004  
(Principal Labour Court CGID No. 297/99)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

## BETWEEN

Sri S. Rajendran : I Party/Petitioner

AND

The Assistant General : II Party/Management  
Manager,  
State Bank of India,  
Region-I,  
Trichirapalli.

## APPEARANCE

For the Petitioner : Sri V. S. Ekambaram,  
Authorised Representative

For the Management : M/s. K. S. Sundar, Advocates

## AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/633/98-IR(B-1) dated 28-4-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 297/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 189/2004.

2. The Schedule mentioned in that order is as follows :—

“Whether the demand of the workman Shri S. Rajendran, wait list No. 340 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment

as messenger after an interview and medical examination. He was appointed on temporary basis at Tenkasi branch from 26-3-1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Tenkasi branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 26-03-1984, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Tenkasi branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's

action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 609 in waitlist of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more

number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 609, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously

with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 340 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

#### Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time

of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary

employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed

after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting

within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 13(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I. D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I. Ds. have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 *Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation* wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/

Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 *Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others* wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 *Ashok and Others Vs. Maharashtra State Transport Corporation and Others* wherein the Division Bench of the Bombay High Court has

held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 1 LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment

thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument

advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 *Union of India and Others Vs. K. V. Vijeesh* wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 *Syndicate Bank & Ors. Vs. Shankar Paul and Others* wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 *Shankarsan Dash Vs. Union of India* wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the

expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 *State of Haryana and Ors. Vs. Piara Singh and Others* wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 *Ashwani Kumar and Others Vs. State of Bihar and Others* wherein the full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned

counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further,

the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. .... It has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujampur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement,

the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

#### Witnesses Examined :

For the Petitioner : WW1 Sri S. Rajendran  
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan  
MW2 Sri T. L. Selvaraj

#### Documents Marked :

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily <i>Thanthi</i> based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in <i>The Hindu</i> on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in <i>The Hindu</i> extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	08-05-85	Xerox copy of the service certificate issued by Tenkasi branch.
W10	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate care and service conditions.
W11	Nil	Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95.
W12	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W13	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W14	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W15	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W16	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.

Ex. No.	Date	Description
W17	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W18	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W19	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W20	09-11-92	Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff.
W21	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W22	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W23	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W24	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

**For the Respondent/Management :**

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Trichy Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 14 अगस्त, 2007

का. आ. 2511.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 194/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/638/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 14th August, 2007

S.O. 2511.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 194/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 14-8-2007.

[No. L-12012/638/1998-IR (B-I)]

AJAY KUMAR, Desk Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
CHENNAI**

Wednesday, the 31st January, 2007

**PRESENT**

K. Jayaraman, Presiding Officer

**INDUSTRIAL DISPUTE NO. 194/2004****(Principal Labour Court CGID No. 302/99)**

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

**BETWEEN**

Sri G. Mohankumar : I Party/Petitioner

**AND**

The Assistant General : II Party/Management  
Manager,  
State Bank of India,  
Region-I  
Trichirapalli.

**APPEARANCE**

For the Petitioner : Sri V. S. Ekambaram,  
Authorised Representative

For the Management : Mr. K. S. Sundar,  
Advocate

## AWARD

The Central Government, Ministry of Labour vide Order No. L-12012/638/98-IR(B-I) dated 28-4-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 302/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I. D. No. 194/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri G. Mohankumar, wait list No. 340 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at H. E. Kailasapuram branch from September, 1984. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the H. E. Kailasapuram branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From September 1984, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Trichy

Z.O. branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I. D. Act in lieu of provisions of

law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was waitlisted as candidate No. 340 in wait list of Zonal Office, Trichy. So far 212 waitlisted temporary candidates, out of 652 waitlisted temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 652 waitlisted candidates, 212 temporary employees were appointed and since the Petitioner was waitlisted at 340, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements

were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 340 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

**Point No. 1 :**

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service

exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Ex. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause I of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause I is illegal. Clause I (a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Ex. M1, M3 and M4 respectively.

But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on-mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not inconformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended to behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their

appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(o) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3)\* settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001

and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I. D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I. Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business

exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering

Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the Federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only one duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal

cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and

discriminatory.” He further relied on the rulings reported in 1997 6 SCC 584 *Syndicate Bank & Ors. Vs. Shankar Paul and Others* wherein the Supreme Court has held that “by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively.” He further relied on the rulings reported in 1991 3 SCC 47 *Shankarsan Dash Vs. Union of India* wherein the Supreme Court has held that “candidates included in merit list has no indefeasible right to appointment even if a vacancy exists” and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 *State of Haryana and Ors. Vs. Piara Singh and Others* wherein the Supreme Court has held that “now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year’s service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow

irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 *Ashwani Kumar and Others Vs. State of Bihar and Others* wherein the full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. “So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity.” Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 *Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors.* wherein the Supreme Court has held that “they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary.” He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that “Under Section 25G of the I.D. Act retrenchment procedure following principle of ‘last come—first go’ is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors.” Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 *Secretary, State of Karnataka Vs. Uma Devi*, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. .... it has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 *National Fertilizers Ltd. and Others Vs. Somvir Singh*, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 *Municipal Council, Sujampur Vs. Surinder Kumar*, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 *Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey* wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the

subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decision, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim

regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

**Point No. 2 :**

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

**Witnesses Examined :**

For the Petitioner : WW1 Sri G. Mohankumar

WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan

MW2 Sri T. L. Selvaraj

**Documents Marked :**

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.

Ex. No.	Date	Description
W9	01-01-87	Xerox copy of the service certificate issued by H. E. Kailasapuram Branch.
W10	Nil	Xerox copy of the service certificate issued by Melachinthamani Branch.
W11	19-06-93	Xerox copy of the service certificate issued by Tiruchirappalli Town Branch.
W12	30-06-93	Xerox copy of the service certificate issued by Woraiyur Branch.
W13	05-11-93	Xerox copy of the service certificate issued by Tiruchirappalli Branch.
W14	09-08-94	Xerox copy of the service certificate issued by BHEL Township Branch.
W15	29-05-95	Xerox copy of the service certificate issued by Bharathidasan University Branch.
W16	14-11-95	Xerox copy of the service certificate issued by Tiruchirappalli STC Branch.
W17	28-10-96	Xerox copy of the service certificate issued by Tiruchirappalli STC Branch.
W18	27-10-97	Xerox copy of the service certificate issued by Bharathi Dasan University Branch.
W19	07-11-97	Xerox copy of the service certificate issued by Tiruchirappalli Z.O. Branch.
W20	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions.
W21	Nil	Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95.
W22	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W23	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W24	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W25	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W26	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W27	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W28	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.

Ex. No.	Date	Description
W29	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W30	09-11-92	Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff.
W31	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W32	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W33	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W34	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

**For the Respondent/Management :**

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Trichy Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 14 अगस्त, 2007

का. आ. 2512.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 177/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/556/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 14th August, 2007

S.O. 2512.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 177/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 14-8-2007.

[No. L-12012/556/1998-IR(B-I)]

AJAY KUMAR, Desk Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
CHENNAI**

Wednesday, the 31st January, 2007

**PRESENT****K. Jayaraman, Presiding Officer****INDUSTRIAL DISPUTE NO. 177/2004****(Principal Labour Court CGID No. 274/99)**

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

**BETWEEN**

Sri J. Sivagurunathan : I Party/Petitioner

**AND**

The Assistant General : II Party/Management  
Manager,  
State Bank of India, Region-I,  
Trichirapalli.

**APPEARANCE**For the Petitioner : Sri V. S. Ekambaram,  
Authorised Representative

For the Management : Mr. K. S. Sundar, Advocate

**AWARD**

The Central Government, Ministry of Labour vide Order No. L-12012/556/98-IR(B-I) dated 26-04-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 274/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 177/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri J. Sivagurunathan wait list No. 494 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Sripuranthan branch from 27-10-1987. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Sripuranthan branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 27-10-1987, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in Sripuranthan branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the

grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Section 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Section 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said

settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 494 in wait list of Zonal Office, Trichy. So far 212 wait listed temporary candidates, out of 652 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait/list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements, out of 652 wait listed candidates, 212 temporary employees were appointed and since the Petitioner was wait listed at 494, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the wait list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/

casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 494 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?"
- (ii) "To what relief the Petitioner is entitled?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored

by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H

cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Exts. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters, copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Exts. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wage in Class IV category

who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India. Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in The Hindu dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended to behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before or after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(oo) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years

with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the Bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under Sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I. D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I. Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on

which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc.". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on

the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K. C. P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlement are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged

that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only one duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court

is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy." In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents

as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 *Shankarsan Dash Vs. Union of India* wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended\* that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 *State of Haryana and Ors. Vs. Piara Singh and Others* wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though (a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of and without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 *Ashwani Kumar and Others Vs. State of Bihar and Others* wherein the full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted

that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 *Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors.* wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 *Secretary, State of Karnataka Vs. Uma Devi*, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their

appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. .... it has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujampur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank

and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in a similar case, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

**Witnesses Examined :**

For the Petitioner : WW1 Sri J. Sivagurunathan

WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan

MW2 Sri T. L. Selvaraj

**Documents Marked :**

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all branches regarding absorption of daily wagers in Messenger vacancies.
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all branches regarding identification of messenger vacancies and filling them before 31-3-97.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.
W9	Nil	Xerox copy of the service certificate issued by Sripuranthan branch.
W10	Nil	Xerox copy of the service certificate issued by Sripuranthan branch.
W11	Nil	Xerox copy of the service certificate issued by Sripuranthan branch.
W12	Nil	Xerox copy of the service certificate issued by Sripuranthan branch.
W13	Nil	Xerox copy of the service certificate issued by Sripuranthan branch.
W14	Nil	Xerox copy of the service certificate issued by Sripuranthan branch.
W15	Nil	Xerox copy of the service certificate issued by Sripuranthan branch.
W16	Nil	Xerox copy of the administrative guidelines in Reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions.
W17	Nil	Xerox copy of the Vol. III of Reference book on staff matters upto 31-12-95.
W18	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.
W19	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.
W20	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.
W21	17-03-97	Xerox copy of the service particulars—J. Velmurugan.
W22	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.
W23	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W24	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W25	13-02-95	Xerox copy of the Madurai Model Circular letter about engaging temporary employees from the panel of wait list.
W26	09-11-92	Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff.
W27	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W28	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W29	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W30	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.

**For the Respondent/Management :**

Ex. No.	Date	Description
M1	17-11-87	Xerox copy of the settlement.
M2	16-07-88	Xerox copy of the settlement.
M3	27-10-88	Xerox copy of the settlement.
M4	09-01-91	Xerox copy of the settlement.
M5	30-07-96	Xerox copy of the settlement.
M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
M10	Nil	Xerox copy of the wait list of Trichy Module.
M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 14 अगस्त, 2007

का. आ. 2513.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 278/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-8-2007 को प्राप्त हुआ था।

[सं. एल-12012/623/1998-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 14th August, 2007

S.O. 2513.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 278/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, which was received by the Central Government on 14-8-2007.

[No. L-12012/623/1998-IR (B-I)]  
AJAY KUMAR, Desk Officer**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
CHENNAI**

Wednesday, the 31st January, 2007

**PRESENT****K. Jayaraman, Presiding Officer****INDUSTRIAL DISPUTE NO. 278/2004****(Principal Labour Court CGID No. 291/99)**

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workmen]

**BETWEEN**

Sri P. Thomas : I Party/Petitioner

**AND**The Assistant General : II Party/Management  
Manager,  
State Bank of India, Z.O.  
Chennai**APPEARANCE**For the Petitioner : Sri V. S. Ekambaram,  
Authorised Representative

For the Management : M/s. K. S. Sundar, Advocates

**AWARD**

The Central Government, Ministry of Labour vide Order No. L-12012/623/98-IR(B-I) dated 3-5-1999 has referred this dispute earlier to the Tamil Nadu Principal Labour Court, Chennai and the said Labour Court has taken the dispute on its file as CGID No. 291/99 and issued notices to both parties. Both sides entered appearance and filed their claim statement and Counter Statement respectively. After the constitution of this CGIT-cum-Labour Court, the said dispute has been transferred to this Tribunal for adjudication and this Tribunal has numbered it as I.D. No. 278/2004.

2. The Schedule mentioned in that order is as follows:—

“Whether the demand of the workman Shri P. Thomas, wait list No. 413 for restoring the wait list of temporary messengers in the establishment of State Bank of India and consequential appointment thereupon as temporary messenger is justified? If so, to what relief the said workman is entitled?”

3. The allegations of the Petitioner in the Claim Statement are briefly as follows:—

The Petitioner was sponsored by Employment Exchange for the post of sub-staff in Class IV cadre in State Bank of India and he was given appointment as messenger after an interview and medical examination. He was appointed on temporary basis at Ambattur branch from 23-07-1986. The Petitioner was orally informed that his services were no more required. The non-employment of the Petitioner and others became subject matter before Supreme Court in the form of Writ Petition filed by State Bank Employees' Union in Writ Petition No. 542/87 which was taken up by the Supreme Court. The Respondent/Bank, in addition to its counter, filed a copy of settlement under Section 18(1) reached

between management of State Bank of India and All India State Bank of India Staff Federation and the settlement is with regard to absorption of Class IV temporary workmen who were denied employment after 1985-86 were classified in the settlement was under consideration once again and they classified the workmen under three categories namely A, B and C. Though the classification was unreasonable, the Respondent/Bank brought to the notice of the Petitioner about the interview to be held through advertisements. The Petitioner also submitted his application in the prescribed format through Branch Manager of the Ambattur branch. He was called for an interview by a Committee appointed by Respondent/Bank in this regard. But, they have not informed the result of interview and also with regard to appointment. But, the Petitioner was informed orally to join at the branch where he initially worked as a class IV employee. From 23-07-1986, the Petitioner has been working as a temporary messenger and sometimes performing work in other branches also. While working on temporary basis in M.K.B. Nagar branch, another advertisement by the Respondent/Bank was made regarding casual workers who were reported to be in service during the same period. While the Petitioner was working as such, the Manager of the branch informed the Petitioner orally on 31-3-97 that his services are not required any more and he need not attend the office from 1-4-97. Hence, the Petitioner raised a dispute with regard to his non-employment. Since the conciliation ended in failure, the matter was referred to this Tribunal for adjudication. Though reference was sent to this Tribunal, the reference framed did not satisfy the grievance of the Petitioner, he has made a fresh representation to Govt. to reconsider the reference and the Petitioner requested the Respondent/Bank to continue to engage him in service as obtained prior to 31-3-97 and to regularise him in service in due course. The Respondent/Bank took up an unreasonable stand that the service and the number of days worked by Petitioner were treated as of no consequence, since according to the Respondent/Bank, it engaged the Petitioner only in temporary services after the settlement. The Petitioner was not aware of settlement by which his services and number of days worked by him after interview do not merit consideration. The Petitioner was not a party to the settlement mentioned by the Respondent/Bank before the conciliation officer. Therefore, the Respondent's action in not absorbing him in regular service is unjust and illegal. Further, the settlements are repugnant to Sections 25G and 25H of the I. D. Act. The termination of the Petitioner is against the provisions of para 522(4) of Sastry Award. Even though the settlement speaks about three categories only a single wait list has been prepared and the Respondent/Bank has been regularising according to their whims and fancies. The Respondent/Bank has also not observed the instructions regarding grant of increments, leave, medical benefits etc. to

the temporary workmen which amounts to violation of relevant provisions of circular. The Respondent/Bank engaged the Petitioner and extracted the same work either by payment of petty cash or by directing him to work under assumed name or by both which amounts to unfair labour practice. The wait list suffers serious infirmities and it is not based on strict seniority and without any rationale. Hence, for all these reasons the Petitioner prays to grant relief of regular employment in Respondent/Bank with all attendant benefits.

4. As against this, the Respondent in its Counter Statement alleged that reference made by the Govt. for adjudication by this Tribunal itself is not maintainable. The Petitioner was not in continuous service. Hence, the question of regular appointment/absorption does not arise. The engagement of Petitioner was not authorised. The Petitioner is estopped from making claim as per Claim Statement. The settlement drawn under provisions of Sections 18(1) and 18(3) of I. D. Act in lieu of provisions of law, retrenchment and implemented by Respondent/Bank. The claim of the Petitioner is not bona fide and made with ulterior motive. The Petitioner concealed the material facts that he was wait listed as per his length of engagement and could not be absorbed as he was positioned down in seniority. Due to the business exigency, the Respondent/Bank engaged the temporary employees for performance of duties as messenger and such engagements were prevailing from the year 1970 onwards. Such of those employees who are claiming permanent absorption and when their case was espoused by State Bank of India Staff Federation which resulted in five settlements dated 17-11-87, 16-7-88, 7-10-88, 9-1-91 and 30-7-96. The said settlements became subject matter of conciliation proceedings and minutes were drawn under Section 18(3) of I. D. Act. In terms thereof, the Petitioner was considered for permanent appointment as per his eligibility along with similarly placed other temporary employees and the Petitioner was wait listed as candidate No. 413 in wait list of Zonal Office, Chennai. So far 357 wait listed temporary candidates, out of 744 wait listed temporary employees were permanently appointed by Respondent/Bank. It is false to allege that the Petitioner worked as a temporary messenger. The Petitioner was engaged only in leave vacancies as and when it arose. When the Petitioner having submitted to selection process in terms of settlements drawn as per retrenchment provisions referred to above, cannot turn around and claim appointment. Such of those temporary employees who were appointed were engaged for more number of days and hence, they were appointed. Under the settlement, employees were categorised as A, B and C. Considering their temporary service and subject to other eligibility criteria, under category (A) the temporary employees who were engaged for 240 days were to be considered and under category (B) the temporary employees who have completed 270 days aggregate temporary service in any continuous block of 36 calendar months and under category (C) the temporary employees who have completed 30 days aggregate temporary service in any calendar year after 1-7-75 or minimum 70 days

aggregate temporary service in any continuous block of 36 calendar months were to be considered. As per Clause 7, the length of temporary service was to be considered for seniority in the wait list and it was also agreed that wait list was to lapse in December, 1991 and the cut off date was extended upto 31-3-97 for filling up vacancies which were to arise upto 31-12-94. The Petitioner has no valid and enforceable right for appointment. The Respondent had implemented the voluntary retirement scheme and even the permanent vacancies stand substantially reduced. There were no regular vacancies available. The peculiar problem was due to the facts that all the aforesaid temporary employees were working in leave vacancies and not in regular permanent vacancies. In terms of aforesaid settlements out of 744 wait listed candidates, 357 temporary employees were appointed and since the Petitioner was wait listed at 413, he was not appointed. The said settlements were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner is estopped from questioning the settlements directly or indirectly and his claim is liable to be rejected. Further, the said settlements were not questioned by any union so far and the settlements of bank level settlements and operated throughout the country. The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 does not apply to Respondent/Bank and this Tribunal has no jurisdiction to entertain such plea. It is not correct to say that documents and identity of Petitioner was verified before the Petitioner was engaged. It is also not correct to say that the Petitioner was discharging the work of permanent messenger. As per settlements, vacancies upto 31-12-94 were filled up against the waited list of temporary employees and vacancies for 1995-96 has to be filled up against the wait list drawn for appointment of daily wages/casual labour. Further, for circle of Chennai wait list of daily wages was not finalized and hence not published and there is only one wait list for the appointment of temporary employees. After the expiry of wait list, the Petitioner has no claim for permanent absorption. Hence, for all these reasons, the Respondent prays to dismiss the claim with costs.

5. In the additional claim statement, the Petitioner contended that he was having been sponsored by employment exchange and having undergone medical examination, the Petitioner has fulfilled the criteria set out by the Respondent/Bank for selection of candidate for appointment in the post of messenger and other class IV post. He was engaged in the messenger post in the subordinate cadre of the Respondent/Bank continuously with deliberate and artificial breaks. Therefore, the Respondent/Bank is duty bound to regularise the services of the Petitioner as he has acquired the valuable right enshrined in the Constitution of India. In the year 1998, the Respondent/Bank has issued a circular to the effect that under no circumstances, wait listed persons like the Petitioner be engaged even in menial category, thus, the Respondent/Bank imposed total ban for his future employment. Even though there were sufficient number of vacancies in class IV category, the Respondent/Bank deliberately delayed in filling up the vacancies by the wait

listed workmen with ulterior motive. The Respondent/Bank has been arbitrarily filling up the vacancies with the persons other than wait listed workmen according to their whims and fancies. Hence, the Petitioner prays that an award may be passed in his favour.

6. Again, the Petitioner filed a rejoinder to the Counter Statement of the Respondent, wherein it is stated all the settlements made by the bank with the State Bank of India Staff Federation were under Section 18(1) of the Act and not under Section 18(3) of the Act. As per recruitment rules of the Respondent/Bank, recruitment of class IV staff in the Respondent/Bank is in accordance with the instructions laid down under codified circulars of the Respondent/Bank. Even in the Writ Petition before the High Court in W. P. No. 7872 of 1991, the Petitioner questioned the settlement dated 27-10-88 and 9-1-91. It is false to allege that the settlements are contrary to the rights of the Petitioner. Hence, the Petitioner prays that an award may be passed in his favour.

7. In these circumstances, the points for my consideration are :—

- (i) "Whether the demand of the Petitioner in Wait List No. 413 for restoring the wait list of temporary messengers in the Respondent/Bank and consequential appointment thereupon as temporary messenger is justified ?"
- (ii) "To what relief the Petitioner is entitled ?"

Point No. 1 :

8. In this case, on behalf of the Petitioner it is contended that the Petitioner in this case and the Petitioners in the connected industrial disputes have been sponsored by Employment Exchange and they having been called for interview and having been selected and wait listed in terms of the relevant guidelines/circulars of the Respondent/Bank in permanent vacancies in subordinate cadre on temporary basis. After engaging them intermittently for some years, the Petitioner in this case and other Petitioners in the connected disputes were terminated without any notice. Since the Respondent/Bank terminated several temporary employees in the year 1985, the State Bank Employees Union had filed a Writ Petition before the Supreme Court to protect the legal and constitutional rights of the workmen concerned and while the matter was pending in Writ Petition No. 542 (civil) 1987, the Respondent/Bank hurriedly entered into a settlement on the issue of absorption of temporary employees and filed it before the Supreme Court at the time of final hearing of the Writ Petition. This settlement has become an exhibit of the Respondent/Bank and has been marked as Ex. M1. The Petitioner in this case and the Petitioners in the connected cases attacked this settlement as it is not binding on them on the ground that they have been interviewed and selected in the permanent vacancy and Respondent/Bank without any intimation or notice denied an opportunity to work in the bank after 31-3-1997 and therefore, they have raised the dispute in the year 1997 before the labour authorities and they questioned the retrenchment as unjust and illegal and they further prayed

for reinstatement with back wages and other attendant benefits.

9. On behalf of the Petitioner, it is contended that these Petitioners were recruited as temporary employees in the Respondent/Bank under the guidelines and circulars issued by the Respondent/Bank from time to time and further, the same guidelines carry the procedure for regularisation of service of the temporary employees and any settlement in this regard is redundant and in any case, the Petitioner is not bound by settlement under Section 18(1) entered into between the alleged Federation and the Respondent/Management. They further contended that though the Respondent/Bank has stated that the Petitioner has not worked for more than 240 days in a continuous period of 12 calendar months and was not in continuous service on 17-11-1987, therefore, they have no valid and enforceable right for appointment, in the wake of strict instructions and circulars/guidelines issued by the Respondent/Bank to the effect that temporary employees at branches/offices are not allowed to be in service exceeding 200 days, hence the question of Petitioner working for 240 days does not arise at all. Further, they have invoked the relevant provisions of Chapter V-A of the I.D. Act and it is preposterous to contend that the Petitioner has no valid and enforceable right for appointment as Sections 25G and 25H are very much applicable to the Petitioners who are retrenched messengers and are eligible to be reinstated. Learned representative for the Petitioner contended that in 1996 LAB and IC 2248 Central Bank of India Vs. S. Satyam and Others the Supreme Court has held that Chapter V-A of the I. D. Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25F applies but for all cases of retrenchment. Therefore, the application of Section 25H cannot be restricted only to one category of retrenched workmen. Therefore, the contention of the Respondent/Bank that the Petitioner has no valid and enforceable right for appointment is untenable. It is further contended that on behalf of the Petitioner that Exts. W2, W3 and W8 as well as Ex. M8 which constitute/relate to the circular instructions of the Respondent/Bank issued from time to time in connection with the implementation of the settlements on absorption and which are statutory in character. Further, a combined study of Ex. M1 and the averments of MW1 and MW2 and their testimonies during the cross-examination will clearly show how the bank has given a raw deal to the Petitioner from the beginning linking his future with the settlements. Further, Clause 1 of Ex. M1 deals with categorization of retrenched temporary employees into 'A, B and C', but this categorization of 'A, B and C' is quite opposed to the doctrine of 'last come—first go' or 'first come—last go' and therefore, the categorization in Clause 1 is illegal. Clause 1(a) of Ex. M1 provides an opportunity to persons who were engaged on casual basis and allowed to work in leave/casual vacancies of messengers, farashes, cash coolies, water boys, sweepers etc. for absorption along with the other eligible categories of temporary employees is not valid. Further, engaging casuals to do messengerial work is in contravention of the guidelines mentioned in Reference Book on Staff matters,

copy of which is marked as Ex. W8. Further, the appointment of daily wage basis for regular messengerial jobs etc. are strictly prohibited as per bank's circulars/instructions. In such circumstances, the absorption of casuals along with the eligible categories is not valid. Therefore, these persons who were engaged by the Respondent/Bank on casual basis should not be given permanent appointment in the bank service. Those casuals were given more beneficial treatment in the matter of arriving at qualifying service for interview and selection. But, temporary employees have not been informed about this amendment which includes casuals affecting their interest and chance. Further, as per instructions in Ex. W2 four types of waiting lists have to be prepared. But the Respondent/Bank has alleged to have prepared only one wait list for each module as per Ex. M10 in this case. Those candidates under Ex. M10 were found suitable for appointment as messengers and sweepers. Even MW1 is unable to say as to when the wait list Ex. M10 was prepared, but it is mentioned in Ex. M10 that it was prepared based on the settlement dated 17-11-87, 27-10-88 and 9-1-91 which are marked as Exts. M1, M3 and M4 respectively. But, when MW1 has spoken about the settlements, he deposed that settlement dated 27-10-88 was not included in the Madras circle since the High Court order is there, but he has not produced any document in support of the so called non-inclusion except his bald statement. Further, according to MW1 wait list under Ex. M10 was prepared on 2-5-92 but there is no pleading in the Counter Statement with regard to this wait list. Further the Hon'ble High Court has held in its order dated 23-7-99 in W. P. No. 7872 of 1991, which is marked as an exhibit, in which it is stated that 'it is clear that the 1987 settlement was concerned with the temporary class IV employees who were paid scale wages as per Bipartite Settlement while the 1988 settlement dealt with daily wager in Class IV category who were paid wages daily on mutual agreement basis. In such circumstances, as rightly contended the Respondent are not justified and combined the list of candidates covered under 1987 settlement and 1988 settlement since they formed two distinct and separate classes and they cannot treat one class and their action undoubtedly amounts to violation of Article 14 of Constitution of India.' Further, the averment of MW1 and the statements in Counter Statement are contrary to the above and it is nothing but a desperate attempt to wriggle out the illegality committed or perpetrated by the Respondent/Bank by combining equals with unequals. It is further contended on behalf of the Petitioner that as per deposition of MW1 wait list under Ex. M10 comprises of both messengerial and non-messengerial candidates. While the temporary employees were appointed after due process of selection and were paid wages on the basis of industrywise settlement, it is not so in the case of casuals. Therefore, both belongs to two different and distinct categories. But, Ex. M3 provides for the same norms to the casuals as in the case of temporary employees in the matter of absorption. Therefore, it is violative of Articles 14 and 16 of Constitution of India. Therefore, the Petitioner contended that preparation of Ex. M10 namely wait list is not in conformity with the instructions of Ex. M2 and non-preparation of separate panels amounts to violation of circular. Secondly, it has not been prepared as per

instructions in Ex. W2 circular regarding projected vacancies for the period from 1987 to 1994. Furthermore, no wait list was released/published even after the Court order in WMP No. 11932/91 and W. P. No. 7872/91 directing the Respondent/Bank to release the list of successful candidates pursuant to the first advertisement published in *The Hindu* dated 1-8-88. Furthermore, wait list under Ex. M10 does not carry particulars about the candidates date of initial appointment and the number of days put in by them to arrive at their respective seniority. From all these things, it is clear that Ex. M10 has been prepared in violation of instructions and ceased to have the credibility attached to the wait list. Above all, Ex. M1 was not produced at the time of conciliation proceedings held during the year 1997-98 held at Chennai and Madurai and only during the year 2003 the Respondent/Bank produced the wait list Ex. M10 before this Tribunal marking it as a confidential document. It is further contended on behalf of the Petitioner that though the Respondent/Bank has alleged that these Petitioners were engaged in leave vacancy, they have not been told at the time of initial appointment that their appointment was in leave vacancy. Further, even before of after the settlement on absorption of temporary employees, the expression that they were engaged in leave vacancy was used as a device to take them out of the principal clause 2(co) of the I. D. Act, 1947. Though the Petitioner's work in the Respondent/Bank is continuous and though the Petitioner has performed the duties continuously which is still in existence, the categorisation as such is not valid and the provisions of Sastry Award are also violated. Further, the representative of the Petitioner relied on the rulings reported in 1985 4 SCC 201 H. D. Singh Vs. Reserve Bank of India and Others wherein the Supreme Court has held that "to employ workmen as 'badlies' casuals or temporaries and to continue them as such for many years with the object of depriving them of the status and privileges of permanent workmen is illegal." Learned representative further contended that Ex. M10 wait list has not been prepared in accordance with principle of seniority in the legal sense, since the selected candidates with longest service should have priority over those who joined the service later and therefore, the wait list under Ex. M10 which has been drawn up is contrary to law and also bad in law. Thus, the Respondent/Bank has not acted in accordance with the law and the spirit of the settlement, but in utter violation and in breach of it. Though clause 2(e) of Ex. M4 states that candidates found suitable for permanent appointment will be offered appointment against existing/future vacancy anywhere in module or circle and in case, a candidate fails to accept the offer of appointment or posting within the prescribed period, he will be deemed to have refused it and the name shall stand deleted from the respective panel and he shall have no further claim for being considered for permanent appointment in the bank. The Respondent/Bank has not produced any document to show how he has arrived at the seniority and till date, it is a mystery as to who that senior was and there is no documentary evidence in support of the averment and also for the averment of MW1. Therefore, the termination of the Petitioner who was in regular service of the Respondent/Bank is arbitrary, mala fide and illegal and the Respondent/

Bank has not acted in accordance with the terms of settlement on absorption of temporary employees. Though the Respondent/Bank has produced Ex. M6 which alleged to be a copy of minutes of conciliation proceedings dated 9-6-75 before Regional Labour Commissioner (Central), Hyderabad, it is neither a 18(3) settlement nor 12(3) settlement as claimed by the Respondent/Bank which says only with regard to modifications of Ex. M1 to M4 made in terms of Ex. M6. Though the Respondent/Bank produced Ex. M7 and M11 interim orders passed by High Court of Madras in WMP No. 11932/91 and W. P. No. 7872/91 ceased to have any relevance when the main writ has been disposed of in the year 1999 and therefore, they do not have any bearing in the case of the Petitioner. Further, though the Respondent/Management has examined two witnesses, the deposition of management witnesses during the cross-examination had become apparent that they have no personal knowledge about the settlements which are marked as Ex. M1 to M5. Above all, though the Respondent/Bank has referred to voluntary retirement scheme, in the Respondent/Bank it was implemented only in the year 2001 and it constitutes post reference period and hence evidence of Respondent/Bank has no application to the Petitioner's case. The Petitioners have completed the service of 240 days and more in a continuous period of 12 calendar months as enshrined under sections 25B and 25F of the Industrial Disputes Act, therefore, their retrenchment from service is illegal and against the mandatory provisions of Section 25 and therefore, they are deemed to be in continuous service of the Respondent/Bank and they are entitled to the benefits under the provisions of I. D. Act. It is further contended on behalf of the Petitioner that though some of the Petitioners in the connected I. Ds have not completed 240 days, since the Respondent/Bank has not taken into consideration and not included the Sundays and paid holidays as days on which the Petitioners have actually worked and hence, they have also completed 240 days in a period of 12 calendar months. He also relied on the rulings reported in 1985 II LLJ 539 *Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation* wherein the Supreme Court has held that "the expression 'actually worked under the employer' cannot mean that those days only when the workmen worked with hammer, sickle or pen but must necessarily comprehend all those days during which they were in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc". It is further argued that call letters produced by the Petitioner will clearly prove that the Respondent/Bank has conducted the interview and selected the temporary employees who have reported to have submitted their application for absorption as per the bank's circular and therefore, their retrenchment is illegal. In all these cases, the Petitioners were in employment as sub-staff in early 1980s but were denied further engagement on account of settlements/lapsing of wait lists and out of these Petitioners some of them have completed 240 days and more in a continuous period of 12 calendar months and they are in age group of 40 to 50 years and for no fault of theirs, they find themselves stranded in life midstream. They have also

not gainfully employed. In such circumstances, this Tribunal has to pass an award in their favour.

10. But, as against this, the learned Senior Counsel for the Respondent/Bank contended that the reference made by the Government itself is not maintainable in view of the facts and circumstances of the case. The Petitioner in this case and the Petitioners in the connected disputes were not in continuous service. Hence, the question of regular appointment/absorption does not arise at all and their engagement was not authorised. Further, the Petitioners are estopped from making claim as they had accepted the settlements drawn under the provisions of Sections 18(1) and 18(3) of the I. D. Act, in lieu of the provisions of law and implemented by the Respondent/Bank and the claim of the Petitioners are not bona fide and are made with ulterior motive. Further, they have concealed the material facts that the Petitioner was wait listed as per length of his engagement and could not be absorbed as he was positioned down in the seniority. The Respondent/Bank was engaging temporary employees due to business exigency for the performance of duties as messenger. Further, the allegation that he was sponsored by Employment Exchange is incorrect and the allegation that he worked as temporary messenger is also incorrect, they were engaged against leave vacancies. The settlement entered into by the Respondent/Bank and the federation were bona fide which were the only workable solution and is binding on the Petitioner. The Petitioner accepted the settlement and accordingly he was wait listed and therefore, the Petitioner is estopped from questioning the settlement directly or indirectly and his claim is liable to be rejected. Furthermore, the said settlements were not questioned by any union and the settlements were bank level settlements and operate throughout the country. Further, he relied on the rulings reported in 1991 I LLJ 323 Associated Glass Industries Ltd. Vs. Industrial Tribunal A.P. and Others wherein under Section 12(3) the union entered into a settlement with the management settling the claim of 11 workmen and the workmen resigned from the job and received terminal benefits, but the workmen raised a plea before the Tribunal that they did not resign voluntarily. But the Andhra Pradesh High Court has held that "in the absence of plea that the settlement reached in the course of conciliation is vitiated by fraud, misrepresentation or coercion, the settlement is binding on the workmen." Learned counsel for the Respondent further relied on the rulings reported in 1997 II LLJ 1189 Ashok and Others Vs. Maharashtra State Transport Corporation and Others wherein the Division Bench of the Bombay High Court has held that "therefore a settlement arrived at in the course of the conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. To that extent, it departs from the ordinary law of contracts, the object obviously is to uphold the sanctity of settlements reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement." It further held that "there may be exceptional cases, where there may be allegations of mala fides, fraud

or even corruption or other inducements. But, in the absence of such allegations, a settlement in the course of collective bargaining is entitled to due weight and consideration." Learned counsel for the Respondent further relied on the rulings reported in 1997 I LLJ 308 K.C.P. Ltd. Vs. Presiding Officer and Others wherein the Supreme Court has held that "settlements are divided into two categories namely (i) those arrived at outside the conciliation proceedings under Section 18(1) of the I.D. Act and (ii) those arrived at in the course of conciliation proceedings under Section 18(3). A settlement of the first category has limited application and binds merely parties to it and settlement of the second category made with a recognised majority union has extended application as it will be binding on all workmen of the establishment. Even in case of the first category, if the settlement was reached with a representative union of which the contesting workmen were members and if there was nothing unreasonable or unfair in the terms of the settlement, it must be binding on the contesting workmen also." He further relied on the rulings reported in AIR 2000 SC 469 National Engineering Industries Ltd. Vs. State of Rajasthan and Others wherein the Supreme Court has held that "settlement is arrived at by the free will of the parties and is a pointer to there being goodwill between them. When there is a dispute that the settlement is not bona fide in nature or that it has been arrived at on account of fraud, misrepresentation or concealment of facts or even corruption and other inducements, it could be subject matter of yet another industrial dispute which an appropriate Govt. may refer for adjudication after examining the allegations as there is an underlying assumption that the settlement reached with the help of the conciliation officer must be fair and reasonable." Relying on all these decisions, learned counsel for the Respondent contended that though it is alleged that they are not parties to the settlement, since the federation in which the Petitioner is also one among them, they have entered into settlement with the bank and therefore, it is binding on the Petitioner. Further, he argued that no union of the bank has questioned the settlement and in such circumstances, it cannot be said that it is not binding on them and he is estopped from disputing the same.

11. Learned counsel for the Respondent further contended that though the reference made in this case and other connected disputes is 'whether the demand of the workman with wait list No. given for restoring the wait list of temporary messengers in the establishment of Respondent/Bank and consequential appointment thereupon as temporary messenger is justified?' The Petitioner contended that the retrenchment made by the Respondent/Bank is not valid and he has to be reinstated in service with full back wages etc. Hence, the Petitioner's contention against the reference made by the Govt. is not valid. Further, in this case, the Court has to see whether the restoration of wait list can be made as contended by the Petitioner and not reinstatement as alleged by the Petitioner in the Claim Statement.

12. But, as against this on behalf of the Petitioner it is contended that mere wording of reference is not decisive

in the matter of tenability of a reference and he relied on the rulings reported in 1998 LAB IC 345 Secretary, Kollam Jilla Hotel and Shop Workers Union Vs. Industrial Tribunal, Kollam wherein the Kerala High Court has held that "mere wording of reference is not decisive in the matter of tenability of a reference. Even though the Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only on duty and that is to decide the points on merits and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again." It further held that "the Tribunal should look into the pleading and find out the exact nature of pleading of the Petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits." Further, he argued that the Tribunal has got power to go into the question whether the Petitioner is to be reinstated in service or not for which he relied on the rulings reported in 1998 LAB IC 1664 Van Sagnathan Orient Paper Mills Vs. Industrial Tribunal & Ors. wherein the Madhya Pradesh High Court has held that "the Tribunal cannot go behind the terms of reference, but that does not mean that it cannot look into the pleadings of parties." He also relied on the rulings reported in 1998 LAB IC 1507 A. Sambanthan Vs. Presiding Officer, Labour Court, Madras, wherein it has been held that "it has been repeatedly held that the Labour Court should not attempt to consider the order under reference in a technical manner or a pedantic manner, but should consider the order of reference in a fair and reasonable manner." He also argued that in Express Newspapers P. Ltd. case reported in AIR 1993 SC 569 the Supreme Court has held that "the Tribunal has jurisdiction to consider all incidental matters also and the order of reference should not be construed in the manner which would prolong the industrial adjudication. The Labour Court is expected to decide the real nature of disputes between the parties and with that object in view, it should consider the order of reference in a fair and reasonable manner, though the order of reference is not happily framed nor was it framed to the high expectation of the Labour Court." Relying on all these decisions, the representative for the Petitioner argued that though in the reference, it is not mentioned that whether the retrenchment is valid or not, from the pleadings it is clear that the Petitioners have been retrenched from the Respondent/Bank and therefore, this Tribunal can look into the pleadings of the Petitioners and can decide whether the Petitioner is entitled to be reinstated in service as alleged by him and whether he is entitled to the back wages as alleged by him. Therefore, the argument advanced on the side of the Respondent that it is beyond the scope of reference is without any substance.

13. I find some force in the contention of the representative for the Petitioner. Therefore, I find this Tribunal is entitled to go into the question whether the relief prayed for by the Petitioner can be given to him or not? But, I find that the settlement was validly entered into between the Respondent/Bank and Federation and since it is not questioned by any of the unions of the Respondent/Bank, I find the Petitioner is not entitled to question the settlement.

14. Then the learned counsel for the Respondent contended that since the Petitioner mentioned that he has been kept in the wait list and the time of wait list has been exhausted, now the Petitioner cannot question that he should be reinstated in service and he relied on the rulings reported in 1996 3 SCC 139 Union of India and Others Vs. K. V. Vijeesh wherein the Supreme Court has held that "the only question which falls for determination in this appeal is whether a candidate whose name appears in the select list on the basis of competitive examination acquires a right of appointment in Govt. service in an existing or a future vacancy. In that case, pruning of select list on reduction in number of vacancies was made in view of the impending absorption of steam surplus staff and a policy decision has been taken to reduce the number of vacancies and consequently, a certain number of bottom persons were removed from the select list and the remaining selectees were given appointments according to their comparative merits. In which, the Supreme Court has held that "in such circumstances, denial of appointment to the persons removed from the select list is not arbitrary and discriminatory." He further relied on the rulings reported in 1997 6 SCC 584 Syndicate Bank & Ors. Vs. Shankar Paul and Others wherein the Supreme Court has held that "by its letter dated 7-2-87 the bank informed the Respondents that the panel was valid for one year only and that inclusion of their names in the panel was not to confer on them any right to seek permanent appointment in the services of the bank. Considering the object with which the panel was prepared and the fact that it was a yearly panel expiring on 6-2-98, we are of the opinion that the Respondents did not get any right because of inclusion of their names in the said panel for permanent absorption in the services of the bank. Whatever conditional right they had come to an end with the expiry of the panel. The claim of the Respondents as contained in the W.P. was thus misconceived and therefore, the learned Single Judge and the Division Bench, when it first decided the appeal were right in dismissing the Writ Petition and the appeal respectively." He further relied on the rulings reported in 1991 3 SCC 47 Shankarsan Dash Vs. Union of India wherein the Supreme Court has held that "candidates included in merit list has no indefeasible right to appointment even if a vacancy exists" and relying on all these decisions, learned counsel for the Respondent contended that since the Petitioner has no right to question the wait list and since there is no mala fide on the part of the Respondent/Bank in preparing the wait list, it cannot be said that preparation of wait list was made with mala fide motive. Under such circumstances, after the expiry of the date namely 31-3-1997, the Petitioner cannot plead for restoration of the wait list and he cannot pray for reinstatement as alleged by him. Further, he relied on the rulings reported in 1992 LAB IC 2168 State of Haryana and Ors. Vs. Piara Singh and Others wherein the Supreme Court has held that "now coming to the direction that all those ad hoc temporary employees who have continued for more than a year should be regularised, we find it difficult to sustain it. The direction has been given without reference to the existence of a vacancy. The direction in effect means that every ad hoc/temporary employee who has been continued for one year should be regularised even though

(a) no vacancy is available for him which means creation of a vacancy; (b) he was not sponsored by Employment Exchange nor was he appointed in pursuance of a notification calling for applications which means he had entered by a back door; (c) he was not eligible and qualified for the post at the time of his appointment; (d) his record of service since his appointment is not satisfactory. These are the additional problems indicated by us in para 12 which would arise from giving of such blanket orders. None of the decisions relied upon by the High Court justify such wholesale, unconditional orders. Moreover, from the mere continuation of an ad hoc employee for one year, it cannot be presumed that there is need for regular post. Such a presumption may be justified only when such continuance extends to several years. Further, there can be no rule of thumb in such matters. Conditions and circumstances of one unit may not be the same as of the other. Just because in one case, a direction was given to regularise employees who have put in one year's service as far as possible and subject to fulfilling the qualifications, it cannot be held that in each and every case, such a direction must follow irrespective of an without taking into account the other relevant circumstances and considerations. The relief must be moulded in each case having regard to all the relevant facts and circumstances of that case. It cannot be a mechanical act but a judicious one. From this, the impugned directions must be held to be totally untenable and unsustainable. Thus, the Supreme Court set aside the orders of lower Courts. He further relied on the decision reported in 1997 II SCC 1 Ashwani Kumar and Others Vs. State of Bihar and Others wherein the full Bench of the Supreme Court has considered the above regularisation of appointment in excess of sanctioned posts. "So far as the question of confirmation of these employees whose entry itself was illegal and void is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise, if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But, if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given, it would be an exercise in futility. It would amount to decorating a still born baby. Under these circumstances, there was no occasion to regularise them or to give them valid confirmation. The so called exercise of confirming these employees, therefore, remained a nullity." Therefore, learned counsel for the Respondent contended that these temporary employees were appointed only due to exigencies and they have not appointed against any regular vacancy and they have only appointed in leave vacancies and therefore, they are not entitled to claim any absorption in the Respondent/Bank. Further, he relied on the rulings reported in AIR 1997 SCC 3657 Himanshu Kumar Vidyarthi & Ors. Vs. State of Bihar and Ors. wherein the Supreme Court has held that "they are temporary employees working on daily wages. Under these circumstances, their disengagement from service cannot be construed to be a retrenchment under the I.D. Act. The concept of

retrenchment therefore, cannot be stretched to such an extent as to cover these employees. Since they are only daily wage employees and have no right to the posts, their disengagement is not arbitrary." He further relied on the rulings reported in 1994 3 LLJ (Supp) 754 wherein the Rajasthan High Court has held that "Under Section 25G of the I.D. Act retrenchment procedure following principle of 'last come—first go' is not mandatory but only directory, on sufficient grounds shown, the employer is permitted to depart from the said principle retrenching seniors and retaining juniors." Though in this case, the Petitioner has alleged that his juniors have been made permanent in banking service, he has not established with any evidence that his juniors were made permanent by the Respondent/Bank. Anyhow, if the Petitioner has shown anything, the Respondent/Bank is ready to establish the fact before this Tribunal that he has worked more days than the Petitioner. In such circumstances, the prayer for reinstatement in the services of Respondent/Bank cannot be given to the Petitioner and therefore, the claim is to be dismissed with costs.

15. Learned Senior Advocate further argued that even in recent decision reported in 2006 4 SCC 1 Secretary, State of Karnataka Vs. Uma Devi, the Supreme Court has held that "merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right." Further, it has also held that "it is not as if, the person who accepts an engagement either temporary or casual in nature is not aware of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain—not at arms length since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment, perpetuate illegalities and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible." Further, the Supreme Court while laying down the law, has clearly held that "unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. .... it has to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by relevant rules." Further, in CDJ 2006 SC 443 National Fertilizers Ltd. and

Others Vs. Somvir Singh, wherein the Supreme Court has held that "regularisation furthermore, is not a mode of appointment and if appointment is made without following the rules, the same being a nullity, the question of confirmation of an employee upon the expiry of purported period of probation would not arise." Further, in CDJ 2006 SC 395 Municipal Council, Sujampur Vs. Surinder Kumar, the Supreme Court has held that "it is not disputed that the appointment of the Respondent was not in sanctioned post. Being a 'State' within the meaning of Article 12 of the Constitution of India, the Appellant for the purpose of recruiting its employees was bound to follow the recruitment rules. Any recruitment made in violation of such rules as also in violation of constitutional scheme enshrined under Articles 14 and 16 of the Constitution of India would be void in law." Further, in 2006 2 LLN 89 Madhya Pradesh State Agro Industries Development Corporation Vs. S.C. Pandey wherein the Supreme Court has held that "only because an employee had worked for more than 240 days of service by that itself would not confer any legal right upon him to be regularised in service." The Supreme Court also held that "the changes brought about by the subsequent decisions of this Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, in view of the settled legal position, as noticed hereinbefore."

16. Relying on all these decision, learned counsel for the Respondent contended that since the Petitioner has not been appointed for regular post nor has he been appointed in regular vacancy or sanctioned post, the Petitioner is not entitled to claim regularisation of his service. Further, when they have not been questioned the five settlements entered into between the Respondent/Bank and Federation and since they have not questioned the wait list prepared by the Respondent/Bank, they are not entitled to dispute the same and they are estopped from doing so. Further, their prayer before the labour authorities was only to restore the wait list and also for appointment thereon as temporary messenger as per wait list. Under such circumstances, after expiry of the period mentioned in the settlements which were subsequently amended by settlements, the Petitioners cannot now question either the preparation of wait list or number allotted to them. Under such circumstances, it cannot be questioned by the Petitioner.

17. I find much force in the contention of the learned counsel for the Respondent. Though in the Claim Statement, the Petitioners have made so many allegations with regard to preparation of wait list and also settlements entered into between the Respondent/Bank and Federation, at the time of reference, they have not questioned the settlement nor the number allotted to each individual in the wait list. Further, the Petitioners have not questioned the settlement and they have not alleged that settlement was not a bona fide in nature or it has been arrived at on account of mala fide, misrepresentation, fraud or even corruption or other inducements. Under such circumstances, I find the Petitioners cannot now question the settlements at this stage and since they are only temporary employees and

since it is not shown before this Tribunal that the Respondent/Bank has got sanctioned posts for temporary employees to be absorbed, I find the Petitioners cannot claim for reinstatement or regularisation in services of the Respondent/Bank.

18. Further, the representative for the Petitioner contended that in similar cases, this Tribunal had ordered for reinstatement with back wages and these disputes are also similar in nature and hence, the Petitioners are entitled for the same relief.

19. But, I find since the Supreme Court has held that temporary employees are not entitled to claim any rights for regularisation, merely because they have completed 240 days of continuous service in a period of 12 calendar months and the Supreme Court has also held that each case must be considered on its own merit and the changes brought about by the subsequent decisions of the Supreme Court probably having regard to the changes in the policy decisions of the Govt. in the wake of prevailing market economy, globalisation, privatisation and outsourcing is evident, I find the Petitioner is not entitled to claim regularisation or reinstatement in the Respondent/Bank as alleged by him. Therefore, I find this point against the Petitioner.

#### Point No. 2 :

The next point to be decided in this case is to what relief the Petitioner is entitled ?

20. In view of my foregoing findings that the petitioner is a temporary employee and he is not entitled to be absorbed in regular service or made permanent merely on the strength of such continuance of work, I find the Petitioner is not entitled to any relief as claimed by him. No costs.

21. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st January, 2007.)

K. JAYARAMAN, Presiding Officer

#### Witnesses Examined :

For the Petitioner : WW1 Sri P. Thomas  
WW2 Sri V. S. Ekambaram

For the Respondent : MW1 Sri C. Mariappan  
MW2 Sri C. Ramalingam

#### Documents Marked :

Ex. No.	Date	Description
W1	01-08-88	Xerox copy of the paper publication in daily Thanthi based on Ex. M1.
W2	20-04-88	Xerox copy of the administrative guidelines issued by Respondent/Bank for implementation of Ex. M1.
W3	24-04-91	Xerox copy of the circular of Respondent/Bank to all Branches regarding absorption of daily wagers in Messenger vacancies.

Ex. No.	Date	Description	Ex. No.	Date	Description
W4	01-05-91	Xerox copy of the advertisement in The Hindu on daily wages based on Ex. W4.	W21	31-03-97	Xerox copy of the appointment order to Sri G. Pandi.
W5	20-08-91	Xerox copy of the advertisement in The Hindu extending period of qualifying service to daily wagers.	W22	Feb. 2005	Xerox copy of the pay slip of T. Sekar for the month of February, 2005 wait list No. 395 of Madurai Circle.
W6	15-03-97	Xerox copy of the circular letter of Zonal Office, Chennai about filling up of vacancies of messenger posts.	W23	13-02-95	Xerox copy of the Madurai Module Circular letter about engaging temporary employees from the panel of wait list.
W7	25-03-97	Xerox copy of the circular of Respondent/Bank to all Branches regarding identification of messenger vacancies and filling them before 31-3-97.	W24	09-11-92	Xerox copy of the Head Office Circular No. 28 regarding norms for sanction of messenger staff.
W8	Nil	Xerox copy of the instruction in Reference book on staff about casuals not to be engaged at office/branches to do messengerial work.	W25	09-07-92	Xerox copy of the minutes of the Bipartite meeting.
W9	09-04-87	Xerox copy of the service certificate issued by Ambattur branch.	W26	09-07-92	Xerox copy of the settlement between Respondent/Bank and All India State Bank of India Staff Federation for implementation of norms—creation of part time general attendants.
W10	15-01-88	Xerox copy of the service certificate issued by Arumbakkam branch.	W27	07-02-06	Xerox copy of the local Head Office circular about conversion of part time employees and redesignate them as general attendants.
W11	15-03-96	Xerox copy of the service certificate issued by Janapanchatram branch.	W28	31-12-85	Xerox copy of the local Head Office circular about appointment of temporary employees in subordinate cadre.
W12	16-04-97	Xerox copy of the service certificate issued by MKB Nagar branch.	<b>For the Respondent/Management :</b>		
W13	07-06-97	Xerox copy of the service certificate issued by Nungambakkam branch.	Ex. No.	Date	Description
W14	Nil	Xerox copy of the administrative guidelines in reference book on staff matters issued by Respondent/Bank regarding recruitment to subordinate cadre and service conditions.	M1	17-11-87	Xerox copy of the settlement.
W15	Nil	Xerox copy of the Reference book on staff matters Vol. III consolidated upto 31-12-95.	M2	16-07-88	Xerox copy of the settlement.
W16	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—V. Muralikannan.	M3	27-10-88	Xerox copy of the settlement.
W17	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—K. Subburaj.	M4	09-01-91	Xerox copy of the settlement.
W18	06-03-97	Xerox copy of the call letter from Madurai zonal office for interview of messenger post—J. Velmurugan.	M5	30-07-96	Xerox copy of the settlement.
W19	17-03-97	Xerox copy of the service particulars—J. Velmurugan.	M6	09-06-95	Xerox copy of the minutes of conciliation proceedings.
W20	26-03-97	Xerox copy of the letter advising selection of part time Menial—G. Pandi.	M7	28-05-91	Xerox copy of the order in W.P. No. 7872/91.
			M8	15-05-98	Xerox copy of the order in O.P. No. 2787/97 of High Court of Orissa.
			M9	10-07-99	Xerox copy of the order of Supreme Court in SLP No. 3082/99.
			M10	Nil	Xerox copy of the wait list of Chennai Module.
			M11	25-10-99	Xerox copy of the order passed in CMP No. 16289 & 16290/99 in W.A. No. 1893/99.

नई दिल्ली, 20 अगस्त, 2007

का. आ. 2514.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में निम्नलिखित कार्यालय को, जिनके न्यूनतम 80 प्रतिशत कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

क्रम संख्या	कार्यालय का नाम
1.	उप-क्षेत्रीय कार्यालय (कर्मचारी भविष्य निधि संगठन), लक्ष्मी नगर, दिल्ली
2.	क्षेत्रीय श्रम आयुक्त (केन्द्रीय), जम्मू
3.	सहायक श्रम आयुक्त (केन्द्रीय), फरीदाबाद
4.	श्रम प्रवर्तन अधिकारी (केन्द्रीय), करनाल
5.	श्रम प्रवर्तन अधिकारी (केन्द्रीय), शिमला
6.	श्रम प्रवर्तन अधिकारी (केन्द्रीय), जालंधर

[सं. ई.-11017/1/2006-रा.भा.जी.]

शारदा प्रसाद, संयुक्त सचिव

New Delhi, the 20th August, 2007

S.O. 2514.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union), Rules 1976 the Central Government hereby notifies following offices, at least 80% Staff whereof have acquired working knowledge of Hindi :—

Sl. No.	Name of the Office
1.	Sub-Regional Office (E.P.F.O.), Laxmi Nagar, Delhi.
2.	Regional Labour Commissioner (Central), Jammu.
3.	Assistant Labour Officer (Central), Faridabad.
4.	Labour Enforcement Officer (Central), Karnal.
5.	Labour Enforcement Officer (Central), Shimla.
6.	Labour Enforcement Officer (Central), Jalandhar.

[No. E-11017/1/2006-RBN]  
SHARDA PRASAD, Jt. Secy.